



भारत का राजपत्र The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 10]

नई दिल्ली, शनिवार, मार्च 7, 1998/ फाल्गुन 16, 1919

No. 10]

NEW DELHI, SATURDAY, MARCH 7, 1998/PHALGUNA 16, 1919

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

गृह मंत्रालय
(पुनर्वास प्रभाग)

MINISTRY OF HOME AFFAIRS
(Rehabilitation Division)

New Delhi, the 23rd February, 1998

नई दिल्ली, 23 फरवरी, 1998

का.आ. 474.—विस्थापित व्यक्ति (प्रतिकर एवं पुनर्वास)
अधिनियम, 1954 (1954 का 44) की धारा 34 की
उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मैं
एतद्वारा गृह मंत्रालय, पुनर्वास प्रभाग में श्री मुरजीत
सिंह, अवर सचिव, जिन्हें दिनांक 23-2-98 की समसंख्यक
अधिसूचना के तहत बन्दोबस्त आयुक्त के रूप में नियुक्त
किया गया है, को उक्त अधिनियम की धारा 23 एवं 24
के अन्तर्गत अपील सुनने तथा पुनरीक्षणों की शक्तियां सौंपते हूँ।

S.O. 474.—In exercise of the powers conferred
by sub-section (2) of Section 34 of the Displaced
Persons (Compensation and Rehabilitation) Act,
1954 (44 of 1954), I hereby delegate to Shri Suriit
Singh, Under Secretary in the Ministry of Home
Affairs, Rehabilitation Division, who has been ap-
pointed as Settlement Commissioner vide Notifi-
cation of even number dated the 23-2-1998, the
powers under Sections 23 and 24 of the said Act
for purpose of hearing appeals and revisions under
these Sections.

2. इसके द्वारा दिनांक 12-7-93 की अधिसूचना सं.
1 (4)/93-बन्दोबस्त का अधिक्रमण किया जाता है।

2. This supersedes notification No. 1(4)/93-S(B)
dated 12-7-1993.

[सं. 1(4)/93-बन्दोबस्त]

एस. के. चट्टोपाध्याय, मुख्य बन्दोबस्त आयुक्त

[No. 1(4)/93-Settlements]
S. K. CHHTOPADHYAY,
Chief Settlement Commissioner

नई दिल्ली, 23 फरवरी, 1998

का.आ. 475.—विस्थापित व्यक्ति (प्रतिकर एवं पुनर्वास) अधिनियम, 1954 (1954 का 44) की धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा गृह मंत्रालय, पुनर्वास प्रभाग में अवर सचिव श्री सुरजीत सिंह को उक्त अधिनियम के द्वारा अथवा उसके तहत बन्दोबस्त आयुक्त को सौंपे गए कार्यों का निष्पादन करने के उद्देश्य से बन्दोबस्त आयुक्त के रूप में नियुक्त करती है।

2. इसके द्वारा 23-7-96 की अधिसूचना सं. 1(4)/93-बन्दोबस्त का अधिक्रमण किया जाता है।

[सं. 1(4)/93-बन्दोबस्त]
फूल सिंह, निदेशक (आर आई)

New Delhi, the 23rd February, 1998

S.O. 475.—In exercise of the powers conferred by sub-section (1) of Section 3 of the Displaced Persons (Compensation & Rehabilitation) Act, 1954 (44 of 1954), the Central Government hereby appoints Shri Surjit Singh, Under Secretary in the Ministry of Home Affairs, Rehabilitation Division as Settlement Commissioner for the purpose of performing the functions assigned to a Settlement Commissioner by or under the said Act.

2. This supersedes notification No. 1(4)93-Settlement dated 23rd July, 1996.

[No. 1(4)93-Settlements]
PHOOL SINGH, Director (RI)

नई दिल्ली, 23 फरवरी, 1998

का.आ. 476.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में, गृह मंत्रालय के निम्नलिखित कार्यालयों में हिन्दी का कार्यसाधक ज्ञान रखने वाले कर्मचारियों की संख्या 80 प्रतिशत से अधिक हो जाने के फलस्वरूप उन्हें एतद्वारा अधिसूचित करती है :—

1. सहायक प्रशिक्षण केन्द्र, सीमा सुरक्षा बल, उत्तर बंगाल
2. 84 बटालियन, सीमा सुरक्षा बल।

[संख्या 12017/1/98-हिन्दी]
राजेन्द्र सिंह, निदेशक (राजभाषा)

New Delhi, the 23rd February, 1998

S.O. 476.—In pursuance of Sub-Rule (4) of Rule 10 of the Official Languages (Use for Official purposes of the Union) Rules, 1976, the Central Government hereby notifies the following offices of the Ministry of Home Affairs where the percentage of Hindi knowing staff has gone above 80%.

1. Subsidiary Training Centre, Border Security Force, North Bengal.
2. 84 Battalion, Border Security Force.

[No. 12017/1/98-Hindi]
RAJENDRA SINGH, Director (OL)

कार्मिक, लोक शिकायत तथा पेंशन सेवानाय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 20 फरवरी, 1998

का.आ. 477.—केन्द्रीय सरकार, दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (i) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, महाराष्ट्र राज्य सरकार की सहमति में, जो गृह विभाग आदेश सं. सी-11-1097/सी. आर.-599/पी. ओ. एल.-12, दिनांक 10-12-97 द्वारा प्रदान की गई थी, दिल्ली विशेष पुलिस स्थापन के मदस्यों की शक्तियों और अधिकारिता का विस्तार भारतीय दंड संहिता की धारा 465, 467, 468, 471, 474, 419 और 420 आई. पी. सी. दिनांक 4-7-97 को रजिस्ट्रीकृत पुलिस स्टेशन सहार, मुम्बई में संबंधित एफ. आई. आर. व अपराध सं. 522/97, 523/97, दिनांक 4-7-97 के अन्वेषण के लिए, जो इसमें प्रदर्शित अपराधों के संबंध में या उक्त मामले से उद्भूत होने वाले उसी सव्यवहार के अनुक्रम में किये गये किसी अन्य अपराध के संबंध में या उनसे ससक्त प्रयत्न, दूष्प्रेरण और पद्धत है, संपूर्ण महाराष्ट्र राज्य पर अधिकृत करती है।

[सं. 228/67/97-ए. बी. डी. II]

हरि सिंह, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES
AND PENSION

(Department of Personnel and Training)

New Delhi, the 20th February, 1998

S.O. 477.—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Maharashtra vide Home Department order No. C-II-1097/CR-599/POL-12 dated 10-12-1997 hereby extends the powers and jurisdiction of the member of the Delhi Special Police Establishment to the whole State of Maharashtra for investigation of FIRs vide Case Crime No. 522/97 and 523/97 dated 4-7-1997 relating to police-Station Sahar Distt. Mumbai registered on 4-7-97 U/Ss. 465, 467, 468, 471, 474, 419 and 420 of IPC or any other offences, attempts abetments and conspiracies in relation to or in connection with the said offences committed in the course of the same transaction arising out of the same facts.

[No. 228/67/97-AVD. II]

HARI SINGH, Under Secy.

नई दिल्ली, 20 फरवरी, 1998

का.आ. 478.—केन्द्रीय सरकार एतद्वारा दंड प्रक्रिया संहिता 1973 (1974 का अधिनियम, सं. 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए निम्नलिखित अधिवक्ताओं को महाराष्ट्र राज्य में दिल्ली विशेष पुलिस स्थापना (के.आ. ब्यूरो) द्वारा स्थापित मामलों के संबंध में विचारण न्यायालयों में निदेशक, केन्द्रीय अन्वेषण ब्यूरो द्वारा उन्हें सौंपे गए मामलों में अभियोजन तथा विधि द्वारा स्थापित पुनरीक्षण अथवा अपील न्यायालयों

में इन मामलों से उद्भूत अपीलों/पुनरीक्षणों के विषयों के संचालन के लिए विशेष लोक अभियंता में नियुक्त करती है :

सर्वश्री

1. वी. एच. पारिख	मुम्बई
2. पठान यूसुफ अली	मुम्बई
3. हीरानन्द ककनाजी	मुम्बई
4. एस. एल. देशपांडे	मुम्बई
5. सुरेश घोलकर	मुम्बई
6. अमृत मोहनभाई देसाई	मुम्बई
7. पी. आर. नामजोशी	मुम्बई
8. एच. बी. पवार	मुम्बई
9. वी. नारायणन	मुम्बई
10. मोहम्मद हुसैन	मुम्बई
11. नृशी नयनतारे वी. राव	मुम्बई
12. डी. व. मिराजकर	मुम्बई
13. ओ. पी. ठाकरे	मुम्बई
14. एस. पी. देशपांडे	पुणे
15. मोहन राव देशमुख	पुणे
16. एन. एम. गौडबोले	थाणे और रायगड
17. डी. के. पाटिल	जलगांव
18. डी. जे. पाटिल	जलगांव
19. एन. ए. गीते	नासिक और ठुले
20. जी. बी. मोरे	नासिक और ठुले
21. एस. बी. औरंगाबादकर	सोलापुर
22. ए. के. सुर्यवंशी	सोलापुर
23. बद्री प्रसाद परमजीत आनन्द दुबे	नागपुर
24. प्रताप हरदास	नागपुर
25. सुधीर लोन	नागपुर
26. पी. एन. देशमुख	नागपुर
27. पी. के. साथीनाथन	नागपुर
28. भूपण रामा कृष्णा गवई	नागपुर
29. जी. सी. कटारिया	नागपुर
30. गंगाधर दुधाने	नागपुर

[सं. 225/45/97-ए.बी. डी. II (i)]

हरि सिंह, अवर सचिव

New Delhi, the 20th February, 1998

S.O. 478.—In exercise of the powers conferred by sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints the following Advocates as Special Public Prosecutors for conducting the prosecution of cases instituted by the Delhi Special Police Establishment (CBI) in the State of Maharashtra as entrusted to them by the Director, Central Bureau of Investigation, in the trial Courts and appeals/revisions or other matter arising out of these cases in revisional or appellate Courts established by law.

1. Shri V. H. Parikh	Mumbai
2. Shri Pathan Yusuf Ali	Mumbai
3. Shri Hiranand Kaknani	Mumbai
4. Shri S. L. Deshpande	Mumbai
5. Shri Suresh Gholkar	Mumbai
6. Shri Amrit Mohanbhai Desai	Mumbai

Shri P. R. Namjoshi	Mumbai
Shri S. B. Pawar	Mumbai
Shri V. Narayanan	Mumbai
10. Shri Mohammed Hussain	Mumbai
11. Ms. Nayantara V. Rao	Mumbai
12. Shri D. U. Mirazkar	Mumbai
13. Shri D. P. Thakre	Mumbai
14. Shri S. B. Deshpande	Pune
15. Shri Mohanrao Deshmukh	Pune
16. Shri N. M. Godbole	Thane and Raigad
17. Shri D. K. Patil	Jalgaon
18. Shri D. J. Patil	Jalgaon
19. Shri N. A. Gite	Nasik and Dhule
20. Shri G. B. More	Nasik and Dhule
21. Shri M. B. Aurangabadkar	Solapur
22. Shri A. K. Suryavanshi	Solapur
23. Shri Badriprasad Parmjit Anand Dubey	Nagpur
24. Shri Pratap Hardas	Nagpur
25. Shri Sudheer Lons	Nagpur
26. Shri P. N. Deshmukh	Nagpur
27. Shri P. K. Sathinathan	Nagpur
28. Shri Bhushan Rama Krishna Gavai	Nagpur
29. Shri G. C. Kataria	Nagpur
30. Shri Gangadhar Dudhana	Nagpur

[No. 225/45/97-AVD-II (i)]
HARI SINGH, Under Secy.

नई दिल्ली, 20 फरवरी, 1998

का.आ. 479.—केन्द्रीय सरकार एतद्वारा दंड प्रक्रिया संहिता 1973 (1974 का अधिनियम, सं. 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए निम्नलिखित अधिवक्ताओं को गोवा राज्य में दिल्ली विशेष पुलिस ब्यूरो (के. अ. ब्यूरो) द्वारा संस्थित मामलों के संबंध में विचारण न्यायालयों में निदेशक, केन्द्रीय अन्वेषण ब्यूरो द्वारा उन्हें सौंपे गए मामलों में अभियोजन तथा विधि द्वारा स्थापित पुनरीक्षण अथवा अपील न्यायालयों में इन मामलों से उद्भूत अपीलों/पुनरीक्षणों अथवा अन्य विषयों के संचालन के लिए विशेष लोक अभियोजक के रूप में नियुक्त करती है :

सर्वश्री

1. एस. डी. लोटलीकर
2. जी. बी. ताम्बा
3. ए. पी. लेवांडे
4. डी. एम. घोंड
5. एस. आर. रिवांकर
6. आर. एस. नरवेकर
7. जे. एस. वाज

[सं. 225/45/97-ए. बी. डी. II (ii)]

हरि सिंह, अवर सचिव

New Delhi, the 20th February, 1998

S.O. 479.—In exercise of the powers conferred by sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints the following Advocates as Special Public Prosecutors for conducting the prosecution of cases instituted by

Delhi Special Police Establishment (CBI) in the State of Goa as entrusted to them by the Director, Central Bureau of Investigation, in the trial courts and appeals/revisions or other matters arising out of these cases in revisional or appellate courts established by Law.

1. Shri S. D. Lotlikar
2. Shri G. V. Tamba
3. Shri A. P. Lavande
4. Shri D. M. Dhond
5. Shri S. R. Rivankar
6. Shri R. S. Narvekar
7. Shri J. S. Vaz

[No. 225/45/97-AVD-II (ii)]
HARI SINGH, Under Secy.

नई दिल्ली, 20 फरवरी, 1998

का.आ. 480.—केन्द्रीय सरकार एतद्वारा बंद प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए निम्नलिखित अधिवक्ताओं को दिल्ली राज्य में दिल्ली विशेष पुलिस स्थापना (के.अ. ब्यूरो) द्वारा संस्थित मामलों के संबंध में विचारण न्यायालयों में निदेशक, केन्द्रीय अन्वेषण ब्यूरो द्वारा उन्हें सौंपे गए मामलों में अभियोजन तथा विधि द्वारा स्थापित पुनरीक्षण अथवा अपील न्यायालयों में इन मामलों से उद्भूत अपीलों/पुनरीक्षणों अथवा अन्य विषयों के संचालन के लिए विशेष लोक अभियोजक के रूप में नियुक्त करती है :

सर्वश्री

1. एन. के. शर्मा
2. अशोक भान
3. एस. के. सक्सेना
4. के. एन. शर्मा
5. एस. सी. अंगरिश
6. एन. एस. माथुर
7. डी. सत्यनारायण
8. सरदार अवतार सिंह
9. आनन्द प्रकाश वर्मा
10. नवीन कुमार माटा
11. सुशील दत्त सलवान
12. सी. एस. शर्मा
13. राजेश मनचंदा
14. के.के. चतुर्वेदी
15. अमर सिंह पोपली
16. वाई. के. कहोल
17. बसजीत सिंह
18. एल. के. उपाध्याय
19. आर. एम. तिवारी
20. आर. के. वर्मा
21. नागेश्वर पांडेय
22. गुरुदयाल सिंह

[सं. 225/83/97-ए.वी.डी.-II]

हरिसिंह, अवर सचिव

New Delhi, the 20th February, 1998

S.O. 480.—In exercise of the powers conferred by sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints the following Advocates as Special Public Prosecutors for conducting the prosecution of cases instituted by Delhi Special Police Establishment (CBI) in the State of Delhi as entrusted to them by the Director, Central Bureau of Investigation, in the trial courts and appeals/revisions or other matters arising out of these cases in revisional or appellate courts established by Law.

1. Shri N. K. Sharma
2. Shri Ashok Bhan
3. Shri S. K. Saxena
4. Shri K. N. Sharma
5. Shri S. C. Angrish
6. Shri N. S. Mathur
7. Shri D. Satyanarayan
8. Shri Sardar Avtar Singh
9. Shri Anand Prakash Verma
10. Shri Naveen Kumar Matta
11. Shri Susheel Datt Salwan
12. Shri C. S. Sharma
13. Shri Rajesh Manchanda
14. Shri K. K. Chaturvedi
15. Shri Amar Singh Popli
16. Shri Y. K. Kahol
17. Shri Baljit Singh
18. Shri L. K. Upadhyay
19. Shri R. M. Tiwari
20. Shri R. K. Verma
21. Shri Nageshwar Pandey
22. Shri Gurudayal Singh

[No. 225/83/97-AVD. II]
HARI SINGH Under Secy.

वित्त मंत्रालय

(आर्थिक कार्य विभाग)

(वैकिंग प्रभाग)

नई दिल्ली, 19 फरवरी, 1998

का.आ. 481.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारत सरकार, भारतीय रिज़र्व बैंक की संस्तुति पर, एतद्वारा घोषणा करती है कि उक्त अधिनियम की धारा 10 की उपधारा (i) (ग) (झ) के उपबंध की धारा 10 की उपधारा (i) (ग) (झ) के उपबंध पंजाब एंड सिंध बैंक के मामले में, जहां तक इसका संबंध पंजाब एंड सिंध बैंक के अध्यक्ष एवं प्रबंध निदेशक श्री एस. एस. कोहली की भारतीय प्रतिभूति व्यापार निगम लि. के बोर्ड में लोक प्रतिनिधि के रूप में नियुक्ति से है, लागू नहीं होंगे।

[फा. सं. 20/5/94-बी. ओ. I]

के.के. मंगल, अवर सचिव

MINISTRY OF FINANCE

(Department of Economic Affairs)
(Banking Division)

New Delhi, the 19th February, 1998

S.O. 481.—In exercise of the powers conferred by Section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Government of India on the recommendations of the Reserve Bank of India hereby declares that the provisions of sub-section (1)(c)(i) of Section 10 of the said Act shall not apply to Punjab and Sind Bank in so far as it relates to the appointment of Shri S. S. Kohli, Chairman and Managing Director, Punjab and Sind Bank on the Board of Directors of Delhi Stock Exchange as a public representative.

[F. No. 20/5/94-B.O.-I]
K. K. MANGAL, Under Secy.

नई दिल्ली, 19 फरवरी, 1998

का. आ. 482.—भारतीय रिजर्व बैंक की संस्तुति पर बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 56 के साथ पठित धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा घोषणा करती है कि तिरुचिरापल्ली सिटी को-ऑपरेटिव बैंक लि. पर 31 मार्च, 1997 को समाप्त वर्ष के लिए उसके द्वारा उसके तुलन पत्र, लाभ-हानि लेख एवं लेखा परीक्षक की रिपोर्ट समाचार पत्र में प्रकाशित करने के संबंध में बैंककारी विनियमन (सहकारी समितियाँ), नियमावली, 1966 के नियम 10 के साथ पठित उक्त अधिनियम की धारा 31 के उपबंध लागू नहीं होंगे।

[सं. 1(7)/96-एसी]
एस. के. ठाकुर, अवसर सचिव

New Delhi, the 19th February, 1998

S.O. 482.—In exercise of the powers conferred by Section 53 read with Section 56 of the Banking Regulation Act, 1949 (10 of 1949), the Central Government on the recommendation of Reserve Bank of India hereby declares that the provisions of Section 31 of the said Act read with Rule 10 of the Banking Regulation (Co-operative Societies) Rules, 1966 shall not apply to Tiruchirapalli City Co-operative Bank Ltd., in so far as they relate to the publication of their balance sheet and profit and loss account for the year ended 31 March, 1997 with the auditor's report in a newspaper.

[No. 1(7)/96-AC]
S. K. THAKUR, Under Secy.

नई दिल्ली, 23 फरवरी, 1998

का.आ. 483.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक की सिफारिश पर, एतद्वारा घोषणा करती है कि उक्त अधिनियम की धारा 19 की उप धारा (2) के उपबंध यूनाटेड बैंक ऑफ इंडिया, कलकत्ता पर 8 जून, 1999 तक की अवधि के लिए उस सीमा तक लागू नहीं होंगे जहां तक उनका संबंध मैसर्स लुज इलेक्ट्रिकल्स प्रा. लिमिटेड में गिरवीदार के रूप में उसकी शेयरधारिता से है।

[संख्या 15/1/96-बी. ओ. ए.]
पी. मोहन, निदेशक (बी. ओ.)

New Delhi, the 23rd February, 1998

S.O. 483.—In exercise of the powers conferred by Section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Central Government on the recommendation of the Reserve Bank of India, hereby declares that the provisions of sub-section (2) of Section 19 of the said Act shall not apply to United Bank of India, Calcutta for a period upto 8th June, 1999 in so far as it relates to its holding of the Shares of M/s. LUZ Electricals (Pvt.) Ltd. as pledgee.

[F. No. 15/1/96-BOA]
P. MOHAN, Director (BO)

नई दिल्ली, 23 फरवरी, 1998

का.आ. 484.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 53 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार, भारतीय रिजर्व बैंक की संस्तुति पर, एतद्वारा घोषणा करती है कि उक्त अधिनियम की धारा 10 की उपधारा (1)(ग)(झ) के उपबन्ध सेन्ट्रल बैंक ऑफ इंडिया के मामले में, जहां तक उसका सम्बन्ध सेन्ट्रल बैंक ऑफ इंडिया के अध्यक्ष एवं प्रबन्ध निदेशक श्री के. सी. चौधरी की कृषि वित्त निगम लि. के बोर्ड में निदेशक के रूप में नियुक्ति से है, लागू नहीं होंगे।

[फा. सं. 20/4/94-बी.ओ. I]
के. के. मंगल, अवसर सचिव

New Delhi, the 23rd February, 1998

S.O. 484.—In exercise of the powers conferred by Section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Government of India on the recommendation of the Reserve Bank of India, hereby declares that the provisions of sub-section 1(c)(i) of Section 10 of the said Act shall not apply to Central Bank of India, in so far as it relates to the appointment of Shri K. C. Chowdhary, Chairman and Managing Director, Central Bank of India as a Director on the Board of Agricultural Finance Corporation Limited.

[F. No. 20/4/94-B.O.I.]
K. K. MANGAL, Under Secy.

सीमा-शुल्क के आयुक्त का कार्यालय

अधिसूचना क्रमांक 01/98 (एन०टी०)-कस्टम्स

पुणे, 16 फरवरी, 1998

का०आ० 485.—भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, नई दिल्ली द्वारा जारी दिनांक 01-07-94 की अधिसूचना संख्या 33/94-कस्टम्स (एन०टी०) के अधीन मुझे प्रदान किए गए अधिकारों को कार्यान्वित करते हुए, मैं, जी० एस० नारंग, आयुक्त, सीमा-शुल्क आयुक्तालय, पुणे, एतद्वारा सीमा-शुल्क अधिनियम, 1962 (1962 का 52) की धारा 9 की व्यवस्थाओं के अधीन, शत-प्रतिशत निर्यातलक्ष्यी यूनिट स्थापन करने के प्रयोजन से महाराष्ट्र राज्य के कोल्हापुर जिले के करवीर तहसील के तामगाव ग्राम परिसर को वेयरहाउसिंग स्टेशन के रूप में घोषित कर रहा हूँ।

[फाइल सं० VIII (कस्टम्स) 40-191/(टीसी/97)]

जी० एस० नारंग, आयुक्त

OFFICE OF THE COMMISSIONER OF
CUSTOMS

NOTIFICATION NO. 1/98(NT)-CUS

Pune, the 16th February, 1998

S.O. 485.—In exercise of the powers conferred on me by Notification No. 33/94-Cus(NT) dated 1-7-94 of the Government of India, Ministry of Finance, Department of Revenue, New Delhi, I, G. S. Narang, Commissioner of Customs, Pune hereby declare Village-Tamagaon, Tal.—Karveer, Dist.—Kolhapur in Maharashtra State as a Warehousing Station under Section 9 of the Customs, Act, 1962 (52 of 1962) for the purpose of setting up of a Hundred Percent Export Oriented Unit (100 per cent E.O.U.)

[F. No. VII/CUS/40-191/(TC/97)]

G. S. NARANG, Commissioner.

मानव संसाधन विकास मंत्रालय

(शिक्षा विभाग)

नई दिल्ली, 20 फरवरी, 1998

का.श्रा. 486.—केन्द्रीय सरकार, राजभाषा (संघ के सरकारी प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में मानव संसाधन विकास मंत्रालय (शिक्षा विभाग) के अन्तर्गत निम्नलिखित केन्द्रीय विद्यालयों को जिनमें 80% से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है अधिसूचित करती है:—

1. केन्द्रीय विद्यालय संगठन,
क्षेत्रीय कार्यालय, लखनऊ
सेक्टर-जे, अलीगंज,
लखनऊ।

2. केन्द्रीय विद्यालय,
शालीमार बाग,
नई दिल्ली।
3. केन्द्रीय विद्यालय,
इफको टाउनशिप,
घियानगर, फूलपुर,
इलाहाबाद।
4. केन्द्रीय विद्यालय,
वी. आर. डी. ई. वाहन नगर,
अहमदनगर (महाराष्ट्र)
5. केन्द्रीय विद्यालय,
सवाई माधोपुर,
राजस्थान-322001
6. केन्द्रीय विद्यालय,
श्री हिन्दू बिद्या भवन,
बजाज रोड, सीकरी,
राजस्थान।

[सं. 11011-5/97-रा. भा. ए.]

निवेन्दु ओझा, निदेशक (रा. भा.)

MINISTRY OF HUMAN RESOURCE
DEVELOPMENT

(Department of Education)

New Delhi, the 20th February, 1998

S.O. 486.—In pursuance of sub-rule (4) of Rule 10 of the Official Languages (Use for purposes of the Union) Rules, 1976 the Central Government hereby notifies of the following Kendriya Vidyalayas under the Ministry of Human Resource Development (Department of Education) more than 80 per cent staff of which has working knowledge of Hindi :—

1. Kendriya Vidyalaya,
Regional Office Lucknow,
Sector J, Aliganj,
Lucknow.
2. Kendriya Vidyalaya,
Shalimar Bagh,
New Delhi.
3. Kendriya Vidyalaya,
IFCO, Township,
Ghiyanagar, Phoolpur,
Allahabad.
4. Kendriya Vidyalaya,
V.R.D.E. Vahan Nagar,
Ahmadnagar (Maharashtra).
5. Kendriya Vidyalaya,
Sawai Madhopur,
Rajasthan-322001.

6. Kendriya Vidyalaya,
Shri Hind Vidya Bhawan,
Bajaj Road, Sikeri,
Rajasthan.

[No. 11011/5/97-OLU]

NISHENDU OJHA, Director (O.L.)

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 26 फरवरी, 1998

का०आ० 487.—केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि के उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) के भाग 2 के खण्ड (क) (3) के अनुसरण में नीचे दी गई अनुसूची के स्तम्भ 1 में उल्लिखित किए अनुसार उक्त अधिनियम के अधीन सक्षम प्राधिकारी "दतिया से भान्डेर के बीच में आने वाले ग्रामीण क्षेत्र से भान्डेर पावर लिमिटेड द्वारा उनके पावर प्रोजेक्ट, भान्डेर" के पाइपलाइन बिछाने को प्राधिकृत करती है।

सारणी

व्यक्ति का नाम	पता	सीमाक्षेत्र
(1)	(2)	(3)
श्री व्ही० एस० कुशवाहा, डिप्टी क्लेक्टर, (सक्षम अधिकारी) दतिया (मध्य प्रदेश)	जिलाध्यक्ष, कार्यालय दतिया	मध्य प्रदेश

[फाइल सं० आर-31015/18/96-प्र०आर० I]
के० सी० कटोच, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 26th February, 1998

S.O. 487.—In pursuance of Clause (a) of Section 2 of the Petroleum and Mineral Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby authorises the person mentioned in column 1 of Table below, to perform the functions of the Competent Authority under the said Act for the work of laying of cross country pipeline by M/s. Bhandar Power Limited for their Power Project if at Bhandar from Datia to Bhandar in Madhya Pradesh mentioned in the corresponding entry in column 2 of the said Table,

TABLE

Name of Person	Address	Territorial Jurisdiction
1	2	3
Shri V.S. Kushwaha Deputy Collector, Competent Authority Datia Office.	Office of the Collector Datia	State of Madhya Pradesh

[File No. R-31015/18/96-OR. II]
K. C. KATOCH, Under Secy.

नागर विमानन मंत्रालय

नई दिल्ली, 29 जनवरी, 1998

का.आ. 488.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में नागर विमानन मंत्रालय के प्रशासनिक नियंत्रणाधीन एलाइंस एयर के निम्नलिखित कार्यालयों को जिनके कर्मचारीवृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :—

1. निर्गमित कार्यालय
एलाइंस एयर,
सफ्दरजंग एयरपोर्ट, नई दिल्ली
2. प्रचालन कार्यालय,
एलाइंस एयर,
पालम एयरपोर्ट,
नई दिल्ली।

[संख्या ई-11011/8/95-हिन्दी]
किशन सिंह, निदेशक (विन.)

MINISTRY OF CIVIL AVIATION

New Delhi, the 29th January, 1998

S.O. 488.—In pursuance of Sub-Rule (4) of Rule 10 of the Official Languages (Use for the Official Purposes of the Union) Rule, 1976, the Central Government hereby notifies the following Offices of Alliance Air under the administrative control of Ministry of Civil Aviation, the staff of which have acquired the working knowledge of Hindi :

1. Corporate Office,
Alliance Air,
Safdarjung Airport,
New Delhi.
2. Operational Office,
Alliance Air,
Palam Airport,
New Delhi.

[No. E-11011/8/95-Hindi]
KISHAN SINGH, Director (Fin.)

नागर विमानन और पर्यटन मंत्रालय

(नागर विमानन विभाग)

नई दिल्ली, 26 फरवरी, 1998

का०आ० 489.—भारतीय विमानपत्तन प्राधिकरण अधिनियम, 1994 (1994 का 55) के खण्ड 3 में प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार एतद्वारा श्री आज्ञापाल सिंह, संयुक्त सचिव को भारतीय विमानपत्तन प्राधिकरण के निदेशक मण्डल में अंशकालिक सदस्य के रूप में श्री रंजन चटर्जी के स्थान पर नियुक्त करती है।

[संख्या एवी० 24015/005/94-वी०बी०]

पी.एस. राधाकृष्ण, अवर सचिव

MINISTRY OF CIVIL AVIATION AND TOURISM

(Department of Civil Aviation)

New Delhi, the 26th February, 1998

S.O. 489.—In exercise of the powers conferred by Section 3 of the Airports Authority of India Act, 1994 (55 of 1994), the Central Government hereby appoints Shr A. P. Singh, Joint Secretary as part-time Member on the Board of Airports Authority of India vice Shri Ranjan Chatterjee.

[No. AV-24015/005/94-VB]

P. S. RADHAKRISHNA, Under Secy.

सूचना और प्रसारण मंत्रालय

नई दिल्ली, 17 फरवरी, 1998

का०आ० 490.—चलचित्र (प्रमाणन) नियमावली 1983 के नियम 9 के साथ पठित चलचित्र अधिनियम, 1952 (1952 का 37) की धारा 5 की उपधारा (2) द्वारा प्रदत्त शक्तियों का उपयोग करते हुए केन्द्रीय सरकार वर्तमान में भारतीय डाक एवं तार सेवा एवं वित्त सेवा में प्रतिनियुक्ति पर कार्यरत भारतीय डाक सेवा के अधिकारी श्री बी० बी० सुधाकर को क्षेत्रीय अधिकारी, केन्द्रीय फिल्म प्रमाणन बोर्ड, हैदराबाद के रूप में 9 फरवरी, 1998 से 7-6-99 के लिए अथवा अगले आदेशों तक जो भी पहले हों, प्रतिनियुक्ति पर नियुक्त करते हैं।

[का० संख्या 801/4/97-एफ (सी)]

आई० पी० मिश्रा, डेस्क अधिकारी

MINISTRY OF INFORMATION AND BROADCASTING

New Delhi, the 17th February, 1998

S.O. 490.—In exercise of the powers conferred by sub-section (2) of Section 5 of the Cinematograph Act, 1952 (37 of 1952) read with rule 9 of the Cinematograph (Certification) Rules, 1983, the Central Government is pleased to appoint

Sh. B. V. Sudhakar, an officer belonging to the Indian Postal Service presently on deputation in the Indian P&T Accounts and Finance Services, as Regional Officer, Central Board of Film Certification, Hyderabad on deputation basis from 9th February, 1998 till 7-6-99 or until further orders whichever is earlier.

[F. No. 801/4/97-F(C)]

I. P. MISHRA, Desk Officer

श्रम मंत्रालय

नई दिल्ली, 9 फरवरी, 1998

का.आ. 491.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नोर्थन रेलवे, इलाहाबाद के प्रबन्ध तंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-2-98 को प्राप्त हुआ था।

[संख्या एल-41011/52/90-आई.आर.(डी.यू.)]

पी.जे. माईकल, डेस्क अधिकारी

MINISTRY OF LABOUR

New Delhi, the 9th February, 1998

S.O. 491.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Northern Rly., Allahabad and their workman, which was received by the Central Government on the 6-2-98.

[No. L-41011/52/90-IR(DU)]

P. J. MICHAEL, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT PANDU NAGAR, KANPUR

Industrial Dispute No. 125 of 1991

In the matter of dispute between :

President,

Rashtriya Chaturth Shreni Raji Mazdoo: Congress, 2/236, Namneir Agra.

AND

Senior Divisional Electrical Engineer, Northern Railway, Allahabad.

Appearance :

Surendra Singh for the workman and none for the management Northern Railway.

AWARD

1. Central Government, Ministry of Labour, vide its notification no. L-41011/52/90-I. R. DU, dated 15-9-91, has referred the following dispute for adjudication to this Tribunal—

“Whether the St. DEN Northern Railway Allahabad is justified in terminating the services of S/Sri Raji

Bahadur Singh, Fauran Singh, Rameshwar, Kehri Singh, Kaptan Singh and Yatendra Kumar w.e.f. 4-8-84 ? If not, what relief they are entitled to?"

2. In this case there are six workmen namely Rajbahadur Singh, Fauran Singh, Rameshwar, Kehri Singh, Kaptan Singh and Yatendra Singh. Out of them the claim of Kehri Singh and Yatendra Singh has not been pressed before me by their authorised representative, hence the case of these two workmen is not being considered.

3. As regards the claim of remaining workmen Rajbahadur Singh, Fauran Singh, Rameshwar and Kaptan Singh is concerned their case is that they were working under AEN Headquarters, Tundla and they were illegally removed from service w.e.f. 4-8-84. When they were removed from service juniors to them were retained in service. Further they were not given opportunity of re-employment when new hands were taken. Hence there was breach of section 25G and 25H of I.D. Act. When this matter was taken up before ALC(C) a settlement had taken on 20-3-91 by virtue of which all these four workmen were taken in service. Hence on the basis of this settlement they are entitled for service.

3. The opposite party railway management has filed reply alleging that concerned workmen had absconded from duty. They were not removed from service. Their names still exist in live register. As regards settlement it is alleged that according to it engagement was to be given as and when job is available.

4. In the rejoinder nothing new has been alleged.

5. From a perusal of the claim statement and rejoinder it will be obvious that these workmen have not given the duty hence it cannot be determined as to whether any junior were retained in service or there had been breach of provisions of section 25H of I.D. Act. In any case from the un-rebutted evidence of Kaptan Singh W.W.1 it is established that they had not absconded from service. Instead they were removed from service.

6. Now the claim on the basis of settlement may be taken. The copies of settlement are on record. It stipulates that they will be provided with work as and when it is available. Their names will continue in live register. The intervening period will be counted for seniority. However, they will not be entitled for wages. I think since 20-3-91 the date of settlement sufficient time has passed and by now work would have been available. Still no work was offered to them. As such they will be entitled for getting work.

7. In view of above discussions, my award is that termination of the concerned workmen is not bad on the basis of settlement. Still they will be entitled for work after one month from the date of publication of this award, which the opposite party northern railway will provide to them.

8. Reference is answered accordingly.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 9 फरवरी, 1998

का.आ. 492.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में, केन्द्रीय सरकार एक सी आई के प्रवर्धित के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर को के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 6-2-98 को प्राप्त हुआ था।

[सं. एन-22012/87/एफ/92 आई आर (सी-II)]

लौली माऊ, डेस्क अधिकारी

New Delhi, the 9th February, 1998

S.O. 492.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government 491 GI/98—2

Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of F.C.I. and their workman, which was received by the Central Government on 6-2-98.

[No. L-22012/87/F/92-IR(C-II)]

LOWLI MAO, Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT PANDU NAGAR, KANPUR

Industrial Dispute No. 76 of 1992

In the matter of dispute between :

Laxmi Narain,
S/o Bhagwandin,
Bithoor Kanpur.

AND

District Manager,
Food Corporation of India,
Civil Lines, Kanpur.

Appearance :

S. K. Nigam for the Management and O. P. Mathur
for the workman.

AWARD

1. Central Government, Ministry of Labour, vide notification No. 22012/87/F/92/IR B-II dated 9-6-92, has referred the following dispute for adjudication to this Tribunal—

"Kya District Manager Food Corporation of India, Kanpur Dwara Bhoospurva Karmkar Sri Laxmi Narain ko dinna 31-10-87 se nishkashit karna nyayochit hai ? Yadi nahi to sambandhit karmkar kis anutosh ka haqdar hai ?"

2. The case of the concerned workman Laxmi Narain is that his name was sponsored by employment exchange, Kanpur, for the post of messenger with the opposite party Food Corporation of India as he did possess, the requisite qualification of having passed 8th class, the name was sponsored for this post. Thus being satisfied with the declared qualification and other suitability of the concerned workman the opposite party appointed the workman as messenger on 4-5-72 at Kamalganj Farrukhabad. He continued to work upto 7-1-78, when Maniram another messenger lodged a false complaint with the management that the concerned workman has obtained the employment by submitting forged declaration of certificate. It is alleged that the concerned workman himself was a tenant of this Maniram and this Mani Ram had helped the concerned workman in getting this job. In lieu of that the concerned workman used to give Rs. 100/- per month. Later on this demand was raised to Rs. 200/- per month by Maniram. When this demand was not met Maniram had lodged false complaint. In fact he had passed 8th class from Ratan School Kidwai Nagar, Kanpur. In view of this the management had wrongly issued charge-sheet dated 17-2-82 which runs as under—

"The undersigned proposes to hold an inquiry against Sri Laxmi Narain Messenger under Regulation 58 of the FCI (Staff) Regulation 1971. The substance of the imputation of misconduct and misbehaviour in respect of which the inquiry is proposed to be held is stated in the enclosed statement of articles of charges (Annexure-I) statement of the imputation of misconduct or misbehaviour in support of each article of charges is enclosed (Annexure II).

1. List of documents by which the articles of charges are proposed to be maintained is also enclosed (Annexure III).

2. Sri Laxmi Narain messenger is directed to submit within 10 days of the receipt of this memorandum a written statement of the defence and also to state whether he desires to be heard in person.

3. He is informed that an inquiry will be held only in

respect of those articles of charges as are not admitted. He should therefore specifically admit or deny each of charges.

4. Sri Laxmi Narain Messenger is further informed that if he does not submit his written statement or defence on or before the date specified in para 2 above, or does not appear in person before the inquiry authority or otherwise fails or refuse to comply with the provision of regulation of FCI (Staff) Regulation 1971 direction issues in pursuance of the said para the inquiring authority may hold the inquiry against him ex parte.
5. Attention of Sri Laxmi Narain Messenger is invited to regulation of FCI (Staff) Regulation 1971 under which no employee shall bring or attempt to bring political or outside influence to bear upon any superior authority to further his interests in respect of matter pertaining to services under the corporation. If any representation is received on behalf of another person in respect of any matter dealt within these proceedings it will be taken against him for violation of Regulation 50 of FCI (Staff) Regulation 1971.

After holding inquiry the concerned workman was removed from service by order dated 31-7-87, it was alleged that this inquiry was not fairly and properly held.

3. The management opposite party on the other hand maintained that inquiry was fairly and properly held and the concerned workman was given repeated opportunity to furnish the original education certificate but he failed to do so, in this way the concerned workman had obtained employment without having requisite qualification.

4. In the rejoinder nothing new was alleged.

5. On the pleadings of the parties a preliminary issue regarding fairness and propriety of domestic enquiry was framed. Vide finding dated 31-3-97 it was held that the finding was not fair and proper. Accordingly it was set aside and the management was given opportunity to prove the misconduct on merits.

6. In support of their case, the management examined Madan Lal Gupta M.W.1 Assistant Manager besides M-1 to M-25 papers were filed. In rebuttal the concerned workman Laxmi Narain W.W.1 has examined himself. Besides he has filed Ext. W-1 to W-7.

7. The first point which calls for determination is as to whether the concerned workman did possess requisite qualification of having passed 8th class. Laxmi Narain W.W.1 has stated that he had passed junior high school from Ratan School Kidwai Nagar. Original certificate was lost in the fire which took place in his house. Hence, it could not be filed earlier. It appears that the concerned workman did file the copy of this certificate by letter dated 4-10-86. The District Manager of opposite party had requested the Dy. Inspector of Schools, Kanpur inquiring about the genuineness of this certificate. For this purpose one M. P. Singh an official was also deputed to collect this information. Ext. K-1 is that School Leaving Certificate. Ext. 7-Ka-2 is the certificate issued by the office of Dy. Inspector of Schools informing that this certificate is genuine. The management witness has also stated that this certificate is not genuine. In my opinion, it was not enough. When one M. P. Singh an official was deputed to inquire about the genuineness of this certificate the management ought to have filed the copy of that report. In its absence the evidence of the concerned workman has to be accepted.

8. There is another aspect of the case. If the concerned workman actually did not possess requisite educational qualification it ought to have checked at the time of entry in service of the concerned workman. It appears that because employment exchange has sponsored the name of the concerned workman, on the premises that he did possess the requisite education qualification, no necessity was felt for seeing the original certificates at the time of entry in service of the concerned workman. Hence my finding is that the concerned workman did possess the requisite educational qualification at the time of entry. However, the charge

remains intact. This charge is that the concerned workman in spite of repeated directions did not submit the educational certificate nor did he informed about it. Ext. M-1 is the appointment letter by which the concerned workman was required to submit qualification certificate and other certificates. Ext. M-2 is the joining report, Ext. M-3 is the letter submitted by the concerned workman by which character certificate attestation form and medical certificate were produced. It is apparent that educational certificate was not filed. M-6 is the attestation form in which the concerned workman has shown his educational qualification as nil. Ext. M-7 to M-23 are the copies of various letters from 8-3-76 to the year 1982 by which the concerned workman was repeatedly being asked to file original educational certificate but the concerned workman kept mum and did not reply to any of them. No explanation was given by the concerned workman as to why he did not reply to these letters. Hence he is guilty of misconduct to this extent, that in spite of repeated demands by the management he failed to produce original educational certificate. If it was actually lost in fire, this explanation should have been given at the earliest.

9. From the above review my finding is that the concerned workman did possess education qualification but the same was not filed at the time of entry in service by him. Any how this does not constitute a misconduct as the management itself is equally responsible for it for not having insisted for the same before allowing him entry in the service. My further finding is that the concerned workman is guilty of lapse in not giving reply to various letters of management regarding educational certificates from 1976 to 1982. I think, the punishment by way of dismissal from service for this misconduct is highly disproportionate to this misconduct. Ends of justice will sufficiently met if he is denied from the date of his dismissal till his reinstatement within one month from the date of publication of award.

10. Accordingly my award is that dismissal of the workman is bad in law and he will be entitled for reinstatement but without back wages.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 10 फरवरी, 1998

का. आ. 493.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सफदरजंग अस्पताल, नई दिल्ली के प्रबन्धन के संबन्ध में निोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-2-98 को प्राप्त हुआ था।

[सं. एल-42012/164/91-आई आर (डी यू)]

के.वी.बी. उन्नी, डेस्क अधिकारी

New Delhi, the 10th February, 1998

S.O. 493.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Safdarjung Hospital, New Delhi and their workman, which was received by the Central Government on 10-2-1998.

[No. I-42012/164/91-IR(DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

I.D. No. 19/93

In the matter of dispute between :

Shrimati Mahendri Devi,
Ward Aya through
The General Secretary,
Hospital Employees Union,
Aggarwal Bhawan,
G. T. Road, Tis Hazari,
Delhi-54.

Versus

The Medical Superintendent,
Safdarjung Hospital,
New Delhi.

APPEARANCES :

None for the workman.
Shri R. N. Verma for the management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-42012/164/91-LR. (D.U.) dated 18-2-1993 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the management of Safdarjung Hospital, New Delhi in imposing the punishment of stoppage of two annual increments without cumulative effect on Smt. Mahendri Devi, Ward Aya is just and legal? If not, to what relief the workman is entitled to?"

2. The representative for the workman Shri C. P. Aggarwal made statement withdrawing his authority on behalf of the workman on 1-8-97. Registered notice was sent to the workman to appear herself for or through any other authorised representative but no one appeared on behalf of the workman. It appears that the workman was not interested in pursuing the dispute and No Dispute Award is given in this case leaving the parties to bear their own costs.

27th January, 1998.

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 10 फरवरी, 1998

का.आ. 494.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केन्द्रीय शोक निर्माण विभाग, देहरादून के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-2-98 को प्राप्त हुआ था।

[सं.एल-42012/144/87-डी II (बी)]

के.वी.बी. उन्नी, डेस्क अधिकारी

New Delhi, the 10th February, 1998

S.O. 494.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of C.P.W.D., Dehradun and their workman, which was received by the Central Government on 10-2-98.

[No. L-42012/144/87-D-II(B)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

I.D. No. 42/89

In the matter of dispute between :

Shri Nareh Kumar s/o Shri Mohan Lal,
c/o Prem Shankar Saxena, Wireman,
CPWD, I.B.S.N.A.A., Mussorie.

Versus

The Executive Engineer (Elect.), Dehradun,
Central Elect. Division, CPWD,
20, Subhash Road, Dehradun.

APPEARANCES :

Shri R. P. Goyal for the workman.
Shri Aziz Khan for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-42012/144/87-D-II(B) dated 30-9-1988 has referred the following industrial dispute to this Tribunal for adjudication :—

"Whether the action of the management of CPWD in terminating the services of Shri Nareh Kumar, Khalasi (Electrical) w.e.f. 1-9-1984 is justified? If not, to what relief the workman is entitled?"

2. The case was fixed for the evidence of the workman when the representative of the workman Shri R. P. Goyal made statement that the workman was not interested in pursuing the case and wanted to withdraw the dispute.

3. In view of this statement of the representative of the workman No Dispute Award is given in this case leaving the parties to bear their own costs.

29th January, 1998.

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 10 फरवरी, 1998

का.आ. 495.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत सरकार टक्साल, नोएडा, के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-2-98 को प्राप्त हुआ था।

[सं.एल-16012/2/89-आई.आर. (डी.यू.)]

के.वी.बी. उन्नी, डेस्क अधिकारी

New Delhi, the 10th February, 1998

S.O. 495.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Government of India Taksal, Noida and their workman, which was received by the Central Government on 10-2-1998.

[No. L-16012/2/89-IR(DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

I.D. No. 1/90

In the matter of dispute between :

Shri Ram Chander s/o Shri Ishwar Singh,
r/o A-3/37, Kondli Rehabilitation Plan,
Delhi-91.

Versus

General Manager,
Government of India Mint,
NOIDA (Ghaziabad)-201001.

APPEARANCES :

Workman in person.

None for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. 1-16012/2/89-I.R. (D.U.) dated 22-12-89 has referred the following industrial dispute to this Tribunal for adjudication :—

"Whether the action of the Management of Government of India Taksal, Noida in terminating the services of Ram Chander son of Shri Ishwar Singh w.e.f. 2-11-1988 is justified? If not, to what relief the workman is entitled to?"

2. Some of the uncontroverted facts are that the workman Shri Ram Chander an ex-serviceman after having been nominated by the Director General of Resettlement, New Delhi was appointed as a fork lift operator, Grade-III w.e.f. 21st December, 1987. The services of the workman were terminated vide order dated 2nd November, 1988 No. NM/Pers/96/87. There was no charge sheet nor any enquiry was conducted against the workman.

3. The case of the workman is that after having served the Indian Army for considerable time, he was discharged from the Army and in the Discharge Certificate, the work and conduct were shown as very good. The name of the workman was sponsored/nominated by the Office of Director General of Resettlement vide letter dated 2-11-1987 and in response to the same the workman was interviewed by the Management of Government of India, Mint, NOIDA on 23-11-1987, for regular post fork lift operator, Grade-III, as he was eligible and possessed experience for the post in question. After successfully passing the interview test, he was issued appointment order dated 21-12-1987 (No. NM/Pers/96/87) appointing the workman on the post of Fork Lift (Operator), Grade III, in Government of India, Mint, NOIDA, Ghaziabad. The workman was appointed against regular and sanctioned post. The work of Fork Lift Operator is of a regular and permanent nature and the same is essential, necessary and ancillary of minting of coins, which is the main work being carried out in the mint. The workman further submitted, That his work and conduct have always been satisfactory and that he never gave any chance of complaint in the matter of discharge of his duties to his superior officers. The services of workman were terminated vide Order dated 2-11-88 without assigning any reason thereof. No show cause notice was issued to the workman and further no charge sheet was issued before effecting the termination of services. No enquiry was ever conducted. Thus the workman contends that the termination is illegal, arbitrary, against the principles of natural justice and as such liable to be quashed. The workman further contends that he had already completed more than 240 continuous regular and uninterrupted service before the termination and as such the impugned order dated 2-11-88 is bad in the eyes of law also on the ground of violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947.

4. The workman also vehemently contended that the management did not comply with the principle of 'last come first go' and that at least two established juniors are/ were continuing as Fork Lift Operator Grade III even after the termination of the workman. The names of these two juniors are Shri Anand Kumar Nimesh, who joined as Fork Lift Operator Grade III w.e.f. 1-2-1988 and second Shri Prem Vallabh, who joined as Fork Lift Operator w.e.f. 1-3-1988.

5. Similarly, the workman further contended that the management had employed 4 more Fork Lift Operator Grade III after termination of his services, namely Shri Jagdish Prasad (w.e.f. 20-1-1989), Shri Vidur (w.e.f. 10-7-89), Ashok Kumar Sharma (w.e.f. 10-7-89) and Shri Alok Kumar Paul (w.e.f. 2-8-89).

6. The workman thus contends that his termination is mala fide, illegal, unjust and unfair and that same deserves to be quashed and the workman be reinstated into service with continuity of service, back wages and all other consequential benefits such as seniority and promotion to the post of Fork Lift Operator Grade II, etc.

7. The case of the management is that the workman is/ was governed by Central Civil Services Temporary Services Rules and his services have been terminated in accordance with the said Rules and hence the petition under Industrial Dispute is not maintainable and is liable to be rejected as this Tribunal has no jurisdiction. Moreover, there is no industrial dispute between the parties.

8. The Management on merits further submitted that the post in question is not a permanent one and had been sanctioned by the competent authority on temporary and year to year basis. The workman was indisciplined and rude and as such his services were terminated vide order dated 2-11-88 in pursuance of sub-rule 1 of rule 5 of the C.C.S. (T. S.) Rules, 1965.

8. The management supported the above stand/contentions by filing two affidavits of Shri S. K. Berry, Accountant, India Government Mint, NOIDA (6th/26th December, 90) and of Shri G. R. Kahate, General Manager, India Govt. Mint, NOIDA (dated 17th/21st November, 1990) No other contention or point was pressed by the management. The workman also filed an affidavit dated 6-5-91 in support of his whole case. The parties were also given opportunity to file written arguments/submissions in addition to oral hearing.

9. Coming first to the preliminary objection, raised by the Respondent, regarding the maintainability of the case before this Tribunal. It is important to note that admittedly and undisputedly the Management/Respondent is an 'Industry' within the meaning of S2(j) of the Industrial Disputes Act and the workman is a workman within the meaning of Section 2(i) of the Industrial Disputes Act.

10. Section 2(i) of the Industrial Disputes Act, is very relevant for deciding the preliminary objection. The same is reproduced below :—

"Section 2(i) shall stand substituted as under w.e.f. the date to be notified :

(i) "Industry" means any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not,—

(i) any capital has been invested for the purpose of carrying on such activity; or

(ii) such activity is carried on with a motive to make any gain or profit, and includes,—

(a) any activity of the Dock Labour Board established under Section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948);

- (b) any activity relating to the promotion of sales or business or both carried on by an establishment.

But does not include—

- (1) any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one.

Explanation.—For the purposes of this sub-clause, "agricultural operation" does not include any activity carried on in a plantation as defined in clause (f) of Section 2 of the Plantations Labour Act, 1951; or

- (2) hospitals or dispensaries; or
 (3) educational, scientific, research or training institutions; or
 (4) institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; or
 (5) khadi or village industries; or
 (6) any activity of the Government relating to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space; or
 (7) any domestic service; or
 (8) any activity being a profession practised by an individual or body of individuals, if the number of persons employed by the individuals or body of individuals in relation to such profession is less than ten; or
 (9) any activity, being an activity carried on by a co-operative society or a club or any other like body of individuals, if the number of persons employed by the co-operative society, club or other like body of individuals in relation to such activity is less than ten;)"

11. A perusal of the Section 2(j) clearly reveals that even if the provisions of C.C.S. Rules are applicable to the workman, it will not preclude the applicability of the Industrial Disputes Act to the workman. The preliminary objection is, therefore, rejected.

12. Coming to the merit of the case, it is the admitted position that the workman, who is an ex-serviceman, was appointed as Fork Lift Operator Grade III w.e.f. 2-12-1987 and worked upto 2-11-1988 without any break and thus worked for a period of about 300 days in the preceding twelve months before the date of his termination. No show cause notice was given before the termination was effected. No charge sheet was ever issued to the workman in respect of any alleged misconduct and similarly no domestic enquiry was conducted in order to give the workman an opportunity of being heard and defend the charges, if any. To this extent the action of the management amounts to unfair Labour Practice. This is more so because the management has itself alleged that the workman's conduct was blameworthy and amounted to misconduct. In such a situation, it was obligatory upon the management to hold a domestic enquiry so that the workman could state and clear his stand.

13. Thus, termination of the services of the workman, in the facts and circumstances discussed above, and particularly without affording any opportunity to explain, is held to be invalid and illegal as the order of termination casts stigma on the character of the workman and acts as a punishment.

14. In fact, the termination of workman in the present case is nothing but a colourable exercise of power. The workman has also pointed out that two workmen junior to the workman were working as Fork Lift Operator Grade III when the services of the workman in question were terminated.

Similarly, the management employed 4 more workmen after terminating the services of the workman in question. In this connection cross-examination of Shri S. K. Beri, Accountant who appeared on behalf of the management on 25-2-91 is important. Shri Beri admitted that neither any charge sheet nor any show cause notice was given to the workman before termination and that the workman is an ex-serviceman and that he was sponsored by the Director General of Resettlement. Further, Shri Beri admitted that the post of Lift Operator is a sanctioned one on year to year basis. Similarly, Shri Beri admitted that at least one person, namely Shri Jagdish Kumar was appointed after the workman's termination. The termination of services of the workman by the management vide impugned order dated 2-11-1988 is held to be illegal, unjust and unfair. The same is hereby set aside and the workman is directed to be reinstated in service with continuity of service, full back wages and all other consequential benefits.

15. Ordered accordingly. Both the parties to bear their own costs.

29th July, 1998.

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 10 फरवरी, 1998

का.आ. 496—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूची में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबन्धन के संबंध में निष्पक्ष और उनके कर्मचारियों के बीच, अनुसूची में निष्पक्ष औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-2-98 को प्राप्त हुआ था।

[स. एल-12012/398/90-आई.आर.(जी-II)]

के.वी.बी. उन्नी, डेस्क अधिकारी

New Delhi, the 10th February, 1998

S.O. 496.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 9-2-98.

[No. L 12012/398/90 IR(B-II)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL, NEW DELHI

I.D. No. 72/91

In the matter of dispute :

BETWEEN :

Shri Sudhir Kumar Gupta through,
 The State President,
 Punjab National Bank Employees Union,
 123/28/10 Kishanpur, Rajpur Road,
 Dehradun-248009

Versus

Zonal Manager,
 Punjab National Bank,
 18-A, New Road,
 Dehradun-248001

APPEARANCES :

Shri S. N. Sanon—for the workman.
Shri M. K. Ray—for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. I-12012/393/90-I.R. (B-2) dated nil has referred the following industrial dispute to this Tribunal for adjudication :—

"Whether the action of the management of Punjab National Bank in deducting 96 days leave from Shri Sudher Kumar Gupta's account is justified ? If not to what relief is the workman entitled ?"

2. The case was fixed for the arguments when the workman representative Shri S. K. Sanon made statement that after having gone through the record of this case he was satisfied about the leave due to the claimant and did not want to pursue the case further. He also stated that a No Dispute award may be passed in this case.

3. In view of the statement of the representative for the workman being fully satisfied about the leave record of the workman it is held that the action of the management deducting 96 days sick leave from the leave of the workman's account was to be justified. Parties are left to bear their own costs
6-2-98

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 12 फरवरी, 1998

का.आ. 497—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबन्धन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबन्ध में निम्नलिखित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नई दिल्ली के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 9-2-98 को प्राप्त हुआ था।

[नं.एल-12012/344/91-आई आर(बी-II)]

के.वी.बी. उन्नी, डेस्क अधिकारी

New Delhi, the 12th February, 1998

S.O. 497.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 9-2-98.

[No. I-12012/344/91-I.R.(B-II)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI GANPATI SHARMA, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL,

NEW DELHI

I.D. No. 37/92

In the matter of dispute :

BETWEEN :

Shri P. P. Singh Bisht, Clerk,
through Mahasachiv,

P.N.B. Workers Organisation,
898, Nai Sarak, Delhi-110006.

Versus

Zonal Manager,
P.N.B.,
F-14,
Competent House,
Connaught Place,
New Delhi-110001.

APPEARANCES :

Shri Satish Chabra—for the workman.
Mrs. Renu Sharma—for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. I-12012/344/91-I.R. B-2 dated 26-3-92 has referred the following industrial dispute to this Tribunal for adjudication :—

"Whether the action of the management of Punjab National Bank in imposing the penalty of stoppage of two increments with cumulative effect on Shri P. P. Singh Bisht Clerk, is justified ? If not, to what relief is the workman entitled to ?"

2. The workman P.P.S. Singh Bisht in his statement of claim has alleged that the Regional Manager of the South Delhi Region issued charge sheet dated 28-7-87 stating that on 8-7-87 the workman held demonstration and shouted indecent slogans against one Mr. K. D. Bhalla, manhandled, assaulted and injured him within the Bank Premises. After receiving the explanation of the workman departmental enquiry was initiated against him and the management imposed punishment of stoppage of two increments with cumulative effect. The enquiry was/has been challenged in this statement of claim as not having been conducted properly according to principles of natural justice and the punishment awarded to him was highly excessive as against the charges against him.

3. The Management in its reply denied the allegations made in the statement of claim and has alleged that the punishment was according to offence committed by him.

4. The Management in support of its evidence examined Shri B. D. Sharma MW1 while the workman himself appeared as WW1 in support of his case and filed affidavit Ex. WW1/1.

5. I have heard representatives for the parties and have gone through the record.

6. On 12-12-96 the representative for the workman at the time of arguments stated that he did not dispute the fairness of the enquiry and the issue of enquiry may be found in favour of the management. In view of this situation it was held that the enquiry against the workman was found to be fair and proper as not disputed by the workman representative.

7. I have heard representatives for the parties on the quantum of punishment awarded. Keeping in view all the circumstances of this case the punishment given to the workman which was of stoppage of two increments with cumulative effect is modified to the extent that the one increment of the workman shall be stopped without cumulative effect. Parties are left to bear their own costs.

6th Feb. 1998.

GANPATI SHARMA, Presiding Officer

नई दिल्ली, 12 फरवरी, 1998

का.आ. 498—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार फोल्ड एक्जीबीशन आफिसर, डायरेक्टोरेट आफ एडवरटाइजिंग एण्ड विजुअल पब्लिसिटी, एजबाल, मिजोरम के प्रबन्धन के संबंध

नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, गुवाहाटी (असम) के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-2-98 को प्राप्त हुआ था।

[सं. एल-42012/5/95-आई आर (डी यू)]
के.वी.बी. उन्नी, डेस्क अधिकारी

New Delhi, the 12th February, 1998

S.O. 498.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Guwahati (Assam) as shown in the Annexure in the industrial dispute between the employers in relation to the management of Field Exhibition Officer, Directorate of Advertising and Visual Publicity, Aizwal, Mizoram, and their workman, which was received by the Central Government on 12-2-1998.

[No. L-42012/5/95-IR(DU)]
K.V.B. UNNY, Desk Officer

ANNEXURE

IN THE INDUSTRIAL TRIBUNAL :
GUWAHATI : ASSAM

Reference No. 10 of 1996

PRESENT :

Shri J. C. Kalita, B.A. (Hons.) LL.B.,

Presiding Officer

Industrial Tribunal, Guwahati.

In the matter of an Industrial Dispute

BETWEEN

The Field Exhibition Officer,
Directorate of Advertising &
Visual Publicity,
Chandmari, Aizawl-796007.

VERSUS

Shri Gopal Chetty, C/o P.B. Chetty,
Vill-Majbosti,

Dist. Sonitpur, Assam.

AWARD

The Government of India by a Notification No. L-42012/5/95-IR(DO) dated 27-3-1996 referred an Industrial Dispute between the management of Field Exhibition Officer, Directorate of Advertising and Visual Publi-

city, Aizwal, Mizoram and its workman Shri Gopal Chetty for adjudication by this Tribunal with copies to the parties. On receipt of the notification a case was registered and notices were sent to the parties to appear and to submit their written statement. Both the parties appeared and filed their written statement.

The issue reads follows :—

"Whether the action of the Field Exhibition Officer Directorate of Advertising and Visual Publicity, Aizwal, Mizoram, in terminating the services of Shri Gopal Chetty is justified? If not, to what relief the workman is entitled and from what date?"

The workman in his written statement stated that he was engaged as daily wage worker in the office of the Field Exhibition Officer at Aizwal with effect from 1-2-1989 and assigned to work as chowkidar. Since then he has been working in the same capacity although his services were terminated after completion of every 90 days against the post which is permanent in nature requiring regularisation. His services have been fully utilised against a regular vacancy and there was no reason for the management to terminate his services after 90 days just to comply the technical requirement of termination after 90 days even though he has worked at an average of 240 days in a year as against 230/235 days worked by regular employee. The management has prepared a seniority list on all India basis and his name figures in serial No. 29 and conferred him a temporary status; but takes no steps to regularise him. Hence is the dispute.

The management filed no, separate written statement but requested this Tribunal to accept the letter No. FED/AZL/28/96-97-814 dated 14-10-96 as their written statement. Management admitted engagement of the workman as daily worker in the office of the Field Exhibition Officer, Aizwal with effect from 1-2-89 showing break in his services after 90 days of regular service. He is again reemployed for 90 days with a break. This was done only a comply the direction of the Dy. Director (Admn) DAVP, New Delhi as contained in his letter No. A-42011/14/88 Exh(A) dated 19-2-1990.

While the reference is progressing management fails to represent their case by their physical appearance or by engaging a lawyer. Hence the case is heard *ex parte* in the absence of the Management.

Engagement of Gopal Chetty as daily wage worker with effect from 1-2-1989 has been admitted by the management. That he used to serve as a chowkidar in the office of the Field Exhibition Officer at Aizwal, was not denied. Management clearly stated that his services have been fully utilised since 1-2-1989 showing break in service after every 90 days of regular service. The workman is still in the service of the management with the stigma of break in service after 90 days and reemployment again in the same post. This clearly proves the absolute necessity of the service of the workman for the interest of the office administration, but he is deprived of his service continuity to get regularisation under the guise of a letter No. A-42011/14/88-Exh-(A) dated 19-2-1990. A copy of this letter was annexed by the management as a supporting document.

Relying on the Directorate's order No. D-31016/2/88/PVS dated 27-10-1988 and 15-1-1990 it reiterated that no daily wage earner should be retained for more than 180 days and those who have completed the period, should immediately be removed. There was further direction that a list of person's who have completed more than two years may also be sent to the Directorate alongwith explanation for keeping them for more than two years.

In his evidence on oath the workman deposed that the post of chowkidar in the office of the Field Exhibition Officer is yet to be filled up by a regular appointment. Although he has been servicing in the post since 1-2-1989 with a break in service after 90 days. When permanent necessity of a chowkidar is well established the idea of engaging him again and again by showing break in service after 90 days is against the principle of natural justice.

Ext. 6 is a letter written by the Field Exhibition Officer, Aizwal reposing faith and sincerity in the service of the workman. Ext. 1 is the statement of working days worked by the workman in 1989, 1990, 1991 and 1993. Ext. 2 is the statement issued by Employment Exchange showing his date of birth, qualifica-

tion, date of engagement. This shows that he was sponsored by the Employment Exchange which was one of the condition laid down in letter No. A-42011/14/88-Exh(A) dt. 19-2-90.

Ext. 3 is the seniority list prepared by the Directorate of Advertising and Visual Publicity in all India basis. Entry No. 29 of the list contain the name of the workman Gopal Chetty inviting objection or correctness of the seniority. It is stated therein that those who have worked for less than 205 days including the broken period are not conferred with temporary status. But this workman was conferred with temporary status. It means that he has worked for more than 205 days. Ext. 4 is another order passed by the Field Exhibition Officer, general and DAVP Guwahati by which Gopal Chetty and two others were given temporary status having their names on the rolls before 1990 with a direction to pay the wages. All the documents exhibited go to show that the continuation of the workman in the service of the management is not only genuine but also necessary for the interest of the office administration.

Workman deposed on oath that he was not engaged from August 1994 for about 7 months, then again was engaged from March 1995 which is in violation of the order as per Ext. 4. Such break in service after issuance of Ext. 4 is highly arbitrary and prejudicial when there is absolute necessity of the service of an employee as chowkidar.

In support of the workman's case the learned counsel for the workman relied on 1995 (1)GLJ 324 wherein the service rendered to the state on contract basis was discussed. The Hon'ble Gauhati High Court observed that the petitioner had spent long active life in rendering his service to the state contract, blasts the state has utilised the cream of his service, he is now over-aged and not eligible for seeking reemployment anywhere because of the age bar. If he is thrown out of the job at this stage it would not only be arbitrary but would violative of Articles 14 & 16 of the constitution. The same principle applies to this workman.

The Apex Court in its judgement (1991) SCC 28 says that once the appointment continued for long, the service had to be regularised. If a casual worker is continued for a fairly

long spell say two or three years. a presumption may also that there is regular need for his services. In such situation, it became obligatory for the concerned authority to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with a sympathy for the person. Herein this case the workman rendered his valuable service since 1-2-1989 to the satisfaction of the concerned authority, otherwise he ought not to have been engaged again and again after the break. What I find is that it is a clear case of unfair labour practice just to show compliance of the Directorate order No. D-310166/2/88- P&S dated 27-11-1988 and 15-1-1990 at the cost of long service rendered by the workman. Such kind of labour practices is highly repressive.

Under the facts and circumstances discussed above I am firmly of the opinion that the Management's action of not regularising him in the service is highly unjustified and untenable in the eye of law. As per the order in Ext. 4 Shri Gopal Chetty and two other workers on the muster rolls prior to 1990 and confirm to be engaged till date, they are entitled to payment of wages and consequently given temporary service status with a direction to pay wages for the month of Sept., Oct. and Nov., 1993. After conferment of temporary status non engagement in the service in the year 1994 as mentioned herein before is bad and illegal. He should be regularised in the service forthwith and to make payment of unpaid wages if any, at the rate he was paid wages during that period.

I given this award on this 27th January, 1998 under my hand and seal.

J. C. KALITA, Presiding Officer

नई दिल्ली, 13 फरवरी, 1998

का.प्र. 499.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आई.आर.डी.ई., देहरादून के प्रबन्धसूत्र के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-2-98 को प्राप्त हुआ था।

[सं. एल-42012/51/95-आई.आर. (डीयू)]

के.सी.बी. उन्नी, डेस्क अधिकारी

New Delhi, the 13th February, 1998

S.O. 499.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of I.R.D.E., Dehradun and their workman, which was received by the Central Government on 13-2-1998.

[No. L-42012/51/95-IR (DU)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SHRI B. K. SRIVASTAVA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, DEOKI PALACE ROAD, PANDU NAGAR, KANPUR

Industrial Dispute No. 62 of 1996

In the matter of dispute :

BETWEEN

Anil Kumar Gupta
S/o Late Mahendra Kumar Gupta
C/o Shri M.C. Pant
Labour Law Advisor
450, Baliwala Kanwal,
Dehradun.

AND

Director

I.R.D.E., Raniapur District
Dehradun.

APPEARANCES :

Shri M. C. Pant—for the workman.

None—for the management.

AWARD

1. Central Government, Ministry of Labour, New Delhi vide its Notification No. L-42012/51/95-I.R. (DU) dated 27-6-96 has referred the following dispute for adjudication to this Tribunal :

Whether the action of the management of IRDE, Dehradun in terminating the services of Shri Anil Kumar Gupta is just fair and legal? If not, to what relief the workman is entitled to?

2. The case of the concerned workman Anil Kumar Gupta is that he was engaged as orderly by the Instruments Research and Development Estt. on 10-10-84 on compassionate ground because of his father having died in harness on 10-2-84. He was deputed to work as operator on Franking Machine. Subsequently he was promoted as record keeper. In 1985 and 1986 he was given annual increments. Thus he became a permanent employee still his service were terminated on 30-10-87 without holding any enquiry or show cause notice. Hence the termination is bad.

3. The opposite party has filed written statement in which it was denied that the concerned workman after having been appointed as temporarily orderly w.e.f. 10-10-84 and was ever promoted as record keeper. It is not denied that he was deputed to operate Franking Machine. It is further admitted that the applicant was given yearly increment in the years 1985 and 1986. It is further alleged that the applicant was appointed on probation for two years. He was never made permanent. His work was not good. His period for probation was extended six months by letter dated 1-12-86. Still as the work of concerned workman was not good he was removed from service. There was no need to hold enquiry in this regard.

4. In the rejoinder it was denied that the concerned workman was guilty of poor performance of duty and habitual absence from duty.

5. In support of his case the concerned workman Anil Kumar Gupta WW-1 has examined himself and filed so many papers. The opposite party was given repeated opportunity to adduce evidence. Ultimately they were debarred from giving evidence on 24-10-97. Thus the case of the management and papers filed there are not proved. On the other hand the case of concerned workman is duly proved from his un rebutted evidence and documents. In nutshell it is not proved that the concerned workman was not guilty of any misconduct. On the other hand it is proved that the concerned workman has been removed from service without any enquiry or issuing show cause notice. It is well settled law that a permanent employee cannot be removed from service without issue show cause notice to him. It is on the basic requirement of principle of a natural justice which have been flouted in this case. In this way the termination of the concerned workman is bad in law.

6. Accordingly my award is that the termination of the concerned workman is bad in law and he is entitled for reinstatement with back wages.

B. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 12 फरवरी, 1998

का.आ. 500.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार में एच.पी.सी.एल. के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण-1, हैदराबाद के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-2-98 को प्राप्त हुआ था।

[स. एल-30012/87/96-आई आर (सी-I)]

सनातन, डेस्क अधिकारी

New Delhi, the 12th February, 1998

S.O. 500.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-I, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. H.P.C.L. and their workman, which was received by the Central Government on 11-2-1998.

[No. L-30012/87/96-IR (C-I)]

SANATAN, Desk Officer

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL-I AT
HYDERABAD

PRESENT :

Sri V. V. Raghavan, B.A., LL.B., Industrial Tribunal-I.

Hyderabad, the 1st December, 1997

Industrial Dispute No. 66 of/1997

BETWEEN

Sri M. J. Peter, H. No 155,
Malivackal House
Flemakkara Thanikkal,
Thanikkal Lane,
Cochin-682026 (Kerala)

Petitioner

AND

The General Manager,

M/s. Hindustan Petroleum Corp. Ltd.,

6th Church Lane, Calcutta-700001 . Respondent

APPEARANCES :

None—for the petitioner.

M/s. K. Srinivasa Murthy and G. Sudha, Advocates—for the respondent.

AWARD

The Government of India, Ministry of Labour, New Delhi by its order No. L-30012/87/96-IR (Coat-I) dated 14-10-1997 has referred the following dispute u/s. 10(1)(d) and 2-A of the Industrial Disputes Act, 1947 in this court for adjudication :

"Whether the claim of Shri M. P. Peter that he had worked for 240 days during the period of twelve months prior to his termination of employment is legally correct ? If so, whether his employment as casual entitles him for any benefit under the provisions of Act ? If so, to what relief is he entitled ?"

2. After receipt of the above reference, this Tribunal issued notices to both the parties and they received the same. The respondent appeared and filed vakalat. The petitioner did not turn up though notice was served upon him. There is no other alternative except to close the I. D. Hence, the I. D. is closed.

V. V. RAGHAVAN, Industrial Tribunal-I

नई दिल्ली, 12 फरवरी, 1998

का.आ. 501.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूनाइटेड कमर्शियल बैंक के प्रबन्धतंत्र के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कलकत्ता के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-2-98 को प्राप्त हुआ था।

[स-एल-12012/599/86-आईआर (बी-II)]

सनातन, डेस्क अधिकारी

New Delhi, the 12th February, 1998

S.O. 501.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure in the industrial dispute between the employers in relation to the management of United Commercial Bank and their workman, which was received by the Central Government on 10-2-1998.

[No. L-12012/599/86-IR (B-II)]

SANATAN, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
AT CALCUTTA

Reference No 112 of 1988

PARTIES :

Empolyers in relation to the management of United
Commercial Bank

AND

Their workman.

PRESENT :

Mr. Justice A. K. Chakravarty, Presiding Officer.

APPEARANCES :

On behalf of Management—Mr. R. N. Mazumdar, Advocate.

On behalf of Workmen—Mr. K. L. Roy, Advocate.

STATE : West Bengal

INDUSTRY : Banking

AWARD

By Order No. L-2012/599/86-D.II (A) dated 18-8-1987 the Central Government in exercise of its powers under Section 10(1)(d) and (2) A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of United Commercial Bank, Calcutta in relation to their Rafi Ahmed Kidwai Road Branch, Calcutta in terminating the services of Shri Bikash Kr. Bar, Water Boy-cum-Farrash v.c.f. 8-12-85 is justified? If not, to what relief is the concerned workman entitled?"

2. The workman's case is that he was appointed as a Water Boy-cum-Farrash in the Rafi Ahmed Kidwai Road Branch of the United Commercial Bank on 11th June, 1982 and he served in the said capacity for 265 days on a meagre salary of Rs. 35 per month. In 1983 he worked for 272 days in the said capacity with monthly salary of Rs. 60 for the first six months and Rs. 80 from July, 1983. He worked upto October, 1984 as a Water Boy-cum-Farrash for nearly 210 days and from 1-1-1985 to 7-12-1985 he worked as a Pcon-cum-Farrash on a wage/salary of Rs. 10 per day. He also alleged that during his period of service, he worked under the close supervision, control and effective guidance of the management of the Bank. His service having not been confirmed as subordinate staff, he referred the matter to his union who sought intervention of the conciliation officer by a letter to the Labour Commissioner (Central) dated 9-12-1985. Before the matter was referred to the Labour Commissioner, his service was terminated with effect from 8-12-1985. The workman alleges that the principle of natural justice and the provisions of the Industrial Disputes Act, 1947 were not adhered to while issuing the said notice and challenged his termination as an act of unfair labour practice and victimisation. The Labour Commissioner having failed to effect any settlement, the matter was referred to the Central Government, which framed the present reference. The workman has also challenged that in terminating his service, the provisions of Section 25-F of the Industrial Disputes Act, 1947 was not followed. The workman has accordingly prayed for a declaration that the termination of his service with effect from 8-12-1985 was unjust and that he should be reinstated in service with full back wages and all consequential benefits upon his reinstatement should be restored to him.

3. The management, in its written statement, denied the allegations of the concerned workman. The management denied that there was any relationship of master and servant between the United Commercial Bank and the concerned workman. The Branch Manager of the Bank, where the concerned workman worked on contract, has no authority to select him for appointment in the Bank. The management of United Commercial Bank employed the concerned workman on contract basis for performance of varying jobs against varying considerations. The management had no right of control over the nature of work performed by the concerned workman, nor was he subject to any disciplinary action. It is also alleged that from 9-1-1982 to 5-12-1985, the period during which the concerned workman worked, there was no continuity in such service. He also used to get his considerations in terms of his daily work. The Bank accordingly denied the claim of the concerned workman for his absorption in service or reinstatement. The Bank has also denied that the provisions of Section 25-F has any application in this case. The Bank has accordingly prayed for rejection of the claim of the workman.

4. Heard Mr. R. N. Mazumdar, learned Advocate appearing for the management and Mr. K. B. Roy, learned Advocate appearing for the concerned workman.

5. There is no dispute in this case that the concerned workman worked in the Bank from 1982 to 1985. From the annexure to the written statement of the management it will appear that the concerned workman had not rendered

continuous service, though he rendered service for the above period. There is also no dispute that the nature of service of the workman was Water Boy-cum-Farrash. There is also no dispute that he used to get his remuneration during the period of his service on daily wage basis. There is also no dispute that the requirement of Section 25-F of the Industrial Disputes Act, 1947 was not complied with by the management in terminating the service of the concerned workman.

6. Mr. Mazumdar, learned Advocate appearing for the management, submitted that the concerned workman having served the Bank on daily wage basis and no appointment letter having been issued by the management of the Bank, the conclusion is inescapable that the implied contract of his engagement came to an end on the completion of each day. According to him there was fresh contract for each day and accordingly the management having the discretion to make any contract for any particular day and such contract having not been renewed, there cannot be any question of termination or retrenchment under the provisions of Section 2(oo) of the Industrial Disputes Act, 1947.

7. Mr. Roy learned Advocate appearing for the concerned workman, on the other hand, submitted that daily work does not necessarily mean that he was engaged for a day and that payment of daily wage is merely a mode of payment like other modes of payment of weekly wages or monthly wages.

8. The workman admitted in his evidence that at the time of termination of his service he was paid on daily basis @ Rs. 10 per day. Prior to that he claimed to have worked upto 1982 @ Rs. 35 per month. In 1983 his pay was Rs. 60 per month and that went upto Rs. 80 per month and thereafter from June, 1985 till 7-12-1985, as per his written statement, he worked @ Rs. 10 per day. Some vouchers were produced before the Tribunal and they show that at the initial period he was paid monthly at the rate or nearly at the said rate monthly and at the time when his service was terminated he used to get Rs. 10 per day. The Bank has also produced a statement showing the amount of money he used to receive per month and that almost tallies with the statement of the workman in this matter. From the annexure to the written statement of the management it will appear that the workman did not render continuous service during the period and he used to be employed on intermittent basis.

9. It was submitted by Mr. Roy, learned Advocate for the workman, that even assuming that the concerned workman had working on intermittent basis, the total period of his service being 1031 days, the provisions of Section 25-F of the Industrial Disputes Act, 1947 will be attracted and the Bank management having not complied with that provision while terminating his service that the order of termination must be held to be bad and illegal. I am not in a position to agree with Mr. Roy on this point. The position of the concerned workman is to be considered upon consideration of his position existing at the time of termination of his service. At that time he was getting Rs. 10 as his pay on daily basis. From the papers produced by the management it will appear that he was not working continuously and such non-continuous work alongwith daily payment of wages suggest that the contract of service run from day to day. Under the provisions of Section 2(oo) (bb) of the Industrial Disputes Act, 1947 "termination of service of the workman as a result of the non-renewal of the contract of the employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein" shall not come within the meaning of 'retrenchment'. The contract of service being thus of a daily nature, as stated above by me, there is no question of violation of Section 25-F which lays down the condition precedent for retrenchment of workman.

10. Mr. Mazumdar, learned Advocate for the management, next submitted that there being no appointment of the concerned workman in the Bank in any post that the question of termination of his service does not arise at all. According to him, the concerned workman was initially appointed for the purpose of carrying drinking water and he used to be paid monthly a sum of money which has nothing to do with appointment. In applying the nature of engagement of the concerned workman at that time, he

submitted that the payment for bringing such water had to be made from the contingency fund as the Manager of the Bank had no authority to issue any order of appointment. In other words, according to him, the workman was engaged to do the jobs which were merely of casual nature. It appears from the evidence on record that apart from carrying out some otherworks of sundry nature used to be done by the concerned workman. Mr. Mazumdar submitted that these works are of casual nature and that will not confer upon the concerned workman the status of a workman.

11. Mr. Roy, learned Advocate for the workman, on the other hand, drew my attention to the decision of the Hon'ble Supreme Court in the case of H. D. Singh v. Reserve Bank of India, reported in 1985 S.C.C. (1 and 2) 975 and submitted on the basis of the decision that actual work for more than 240 days in a year including Sundays and other paid holidays should be the criterion for calculation of continuous service as required under Section 25-F of the Industrial Disputes Act, 1947. He further stated that the utilisation of the service for a sufficiently long period of time without regularisation amounts to unfair labour practice. In the case cited by Mr. Roy it will appear that the concerned workman was given a appointment letter in terms of which he used to report to the Bank to ascertain whether he could get work on every day. On days when no work was given to him he had to wait till noon to be told by the authority concerned that no work was available on that day. Mr. Roy submitted that the facts of this case being in para-materia agreement with the instant case that the termination of service of such a workman should be held to be bad because of non-compliance of Section 25-F of the Industrial Disputes Act, 1947, and that the termination of the service of the concerned workman must also be declared to be illegal on the same ground. I am not in a position to agree with Mr. Roy on this point because it will appear from this decision that in that case the name of the workman appeared in the muster roll. There is nothing to show that the name of the present workman appeared in the muster roll. This decision, therefore, shall not be of any help to the concerned workman.

12. Mr. Roy further submitted that deprivation of the workman by not absorbing him in service amounts to unfair labour practice. I am not in a position to agree with Mr. Roy on this point because the job of the workman was not continuous in nature and it will appear from the annexures to the written statement of the management that when he was working as Water Boy-cum-Farrash, he rendered services as and when necessary, on certain days in a month. Question of victimisation or unfair labour practice can only arise had the work been of permanent nature and the workman was made to perform such job without permanently appointing him in the said post.

13. The point that next comes up for consideration is whether there was any post for appointment of the concerned workman. The reference itself has shown the status of the concerned workman as a Water Boy-cum-Farrash. The workman himself in his written statement stated that at the time of termination of his service, he was working as Water Boy-cum-Farrash. It will appear from the evidence of WW-2, Sonkarshan Roy, the Secretary of the union, which raised the dispute that their union is recognised by the management and the apex body of the union was a party to the bipartite settlement and they are bound by the settlement. There was five such bipartite settlements and the categories of the employees have been specifically indicated in the first bipartite settlement. He admitted that apart from such description of the employees as made therein, there will be no other workman who can be employed in the Bank. The bipartite settlement was produced before me and it will appear that there is no such employee in the name of Water Boy-cum-Farrash and accordingly no question of existence of any such post for appointment can arise.

14. Mr. Roy took enormous pains to convince this Tribunal that Water Boy-cum-Farrash must also be considered to be a recognised post in terms of the settlement and he wanted to equate the position of the concerned workman to the position of Deputy. I am not in a position to agree with such contention and accordingly it cannot be said that there was existence of any post in the Bank in the name of Water Boy-cum-Farrash.

15. Mr. Mazumdar referred to the case of Muchyamik Siksha Parishad, U.P. v. Anil K. Mishra, reported in AIR 1994 SC 1638 where the question of regularisation of service of the workman working under Education Board was considered. It was held by the Hon'ble Supreme Court in this decision that it is difficult to envisage for such workmen the status of workmen on the analogy of the provisions of Industrial Disputes Act, 1947, importing the incidents of completion of 240 days of work. It was further held here that completion of 240 days work does not under that law import the right to regularisation. This decision has no application to the facts of the present case.

Mr. Mazumdar also cited the case of M. Venugopal v. Divisional Manager, LIC of India, reported in AIR 1994 SC 1343 wherein it was held by the Hon'ble Supreme Court that termination of service of a probationer under the terms of employment is not retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act, 1947 as there is such stipulation in the contract of employment. In the instant case, the nature of the contract, as stated above, being fresh contract every day and such new contract being arrived at every day after termination of the earlier day long contract, the question of retrenchment does not arise.

Mr. Mazumdar also cited the case of Prakash Cotton Mills Pvt. Ltd. v. Rashtriya Mills Mazdoor Sangh, reported in AIR 1986 SC 1514 where the Hon'ble Supreme Court held upon consideration of the position of the 'badly' workman that they are really casual workmen without any right to be employed.

Mr. Mazumdar also cited the case of State of U.P. v. Ajay Kumar, reported in 1997(4) S.C.C. 88 where it was held by the Hon'ble Supreme Court that "It is now settled legal position that there should exist a post and either administrative instruction or statutory rules must be in operation to appoint a person to the post. Daily wage appointment will obviously be in relation to contingent establishment in which there cannot exist any post and it continuous so long as the work exists."

16. I am also to refer in this connection, the case of Himanshu Kumar Viharid v. State of Bihar, reported in 1997 Lab. J.C. 2075 where their Lordships in the Hon'ble Supreme Court upon consideration of the admitted position that the workmen were not appointed to the posts in accordance with the rules but were engaged on the basis of the need of the work and they were temporary employees on daily wage, held that "Under these circumstances, their disengagement from service cannot be construed to be retrenchment under the Industrial Disputes Act. The concept of 'retrenchment', therefore, cannot be stretched to such an extent as to cover these employees." In the said case also the learned Counsel for the petitioners, like Mr. Roy, contended that it was not a case of retrenchment but termination of their services arbitrarily. Their Lordships held upon such consideration that they are only daily-wage employees and have no right to the post. Their disengagement was not arbitrary.

17. I have thus considered all the points raised by the learned Advocates appearing for the parties and also upon consideration of the facts and circumstances of the case and the position of law in this regard, I find that the disengagement of the concerned workman being not a 'retrenchment' under Section 2(oo) of the Industrial Disputes Act as that provision was not available to the concerned workman. I am further to hold in this connection that there being no sanctioned post for appointment to the post held by the concerned workman that no question of appointment to any service or termination from service can arise.

18. In the aforesaid circumstances, the issue under reference, must be answered in the affirmative in favour of the management and the workman shall not be entitled to any relief.

This is my Award.

Dated, Calcutta,

The 22nd January, 1998.

A. K. CHAKRAVARTY, Presiding Officer

नई दिल्ली, 12 फरवरी, 1998

क्र.सं. 502—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वय में, केन्द्रीय सरकार सिंडिकेट बैंक के प्रबन्धकों के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबन्ध में निम्नलिखित औद्योगिक विवाद में औद्योगिक अधिकरण बीकानेर के पंचाट की प्रकृति का है, जो केन्द्रीय सरकार की 10-2-98 को प्राप्त हुआ था।

[सं. एन-12012/421/94-आईआर (सं-II)]

रतनलाल, ईस्क अधिकारी

New Delhi, the 12th February, 1998

S.O. 502.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Bikaner as shown in the Annexure in the industrial dispute between the employers in relation to the management of Syndicate Bank and their workman, which was received by the Central Government on 10-2-98.

[No. L-12012/421/94-IR(B-II)]

SANATAN, Desk Office

अनुबन्ध

औद्योगिक विवाद अधिकरण, बीकानेर

नं०सु० केन्द्रीय औद्योगिक विवाद प्रसंग सं० 6 सन् 1995
मदनलाल वर्मा पुत्र श्री लाधुराम जाति कुम्हार निवासी
क्वार्टर संख्या जी-(1) 48, शृंगर मिन कालोनी, श्री गंगानगर
(राजि०) —प्रार्थी/श्रमिक

व्रतम

- (1) मिण्टीकेट बैंक जॉर्ज आर्चलिक प्रबन्धक, तैपन्दन टावरम, आथम रोड, नेहरू ट्रिज के सामने, अहमदाबाद-380009 (गुजरात)
- (2) शाखा प्रबन्धक, मिण्टीकेट बैंक, 37 पब्लिक पार्क, श्रीगंगानगर —अप्रार्थी/नियोजक

प्रसंग अन्तर्गत धारा 10(1)(घ), औद्योगिक विवाद

अधिनियम, 1947

न्यायाधीश—श्री गुलाम हसन, आर०एच०जे०एम०
उपस्थिति :—

1. श्री गौरीशंकर गुप्ता, अधिवक्ता, श्रमिक प्रार्थी के लिये
2. श्री हरेन्द्र कुमार महीषिया, अधिवक्ता, अप्रार्थी नियोजक के लिये

अधिनियम

27 दिसम्बर, 1997

श्रम मंत्रालय, भारत सरकार ने "औद्योगिक विवाद अधिनियम, 1947" जिसे आगे चलकर "अधिनियम" कहा

जायेगा, की धारा 10 की उपधारा (1) के खण्ड (घ) के अधीन अधिसूचना क्रमांक 12012/421/94-आई०आर० (बी०-2) दिनांक 1 जून, 1995 के द्वारा इस अधिकरण में निम्न विवाद अधिनियमार्थ इस प्रसंग के माध्यम से सजाया :—

"Whether the action of the management of Syndicate Bank, Ahmedabad in terminating the services of Shri Madan Lal Verma, Attender (Peon) w.e.f. 5-5-1993 is legal and justified? If not, to what relief is the said workman entitled."

2 प्रसंग प्राप्त होने पर पक्षकारों ने अपने-अपने अभिवक्तन प्रस्तुत किये। प्रार्थी ने अपना स्टेटमेंट आफ क्लेम इस आशय के साथ पेश किया है कि प्रार्थी जिसे आगे चलकर "श्रमिक" कहा जायेगा की अप्रार्थी जिसे आगे चलकर "नियोजक" कहा जायेगा, के द्वारा अपने आदेश क्रमांक 143/8370/एसजेएमआर/दि० 3-5-92 द्वारा अप्रार्थी बैंक सं० 2 की शाखा में अटेंडर के पद पर आगामी आदेश तक नियुक्त किया गया था, श्रमिक नियोजक बैंक के नियोजनाधीन दिनांक 3-9-92 से 4-5-93 तक बिना किसी व्यवधान के निरन्तर 240 दिन से अधिक अटेंडर के पद पर कार्य करता रहा है, उसका कार्यकाल अत्यन्त स्वच्छ व ईमानदारी व कर्तव्य परायणता का था। नियोजक ने भर्त्सक दृष्टि दिनांक 4-5-93 के द्वारा श्रमिक को वैतनिक श्रमिक द्वारा पुनः बैंक में कार्यभार संभालने पर दिनांक 1-5-93 को ही बैंक समय की समाप्ति पर तुरन्त प्रभाव से कार्यभार से मुक्त करवा दिया, उसको बीकानेर से हटा दिया। इस प्रकार नियोजक द्वारा श्रमिक की अवैध, अनुचित एवं अप्रत्याशित रूप से छुट्टी की गयी है। नियोजक ने श्रमिक की छुट्टी करने के पूर्व अधिनियम के प्रावधानों के अन्तर्गत कोई पाठना नहीं की है। श्रमिक ने नियोजक बैंक के अधीन छुट्टी के बाद भी विभिन्न विधियों पर कुल 67 दिन कार्य किया है इस प्रकार वह नियोजक बैंक में अटेंडर के पद पर कार्य करने में योग्य व सक्षम है। नियोजक ने श्रमिक को अनुचित श्रम व्यवस्था अपनाने हुए उसका शोषण करने हुए उसे बेकार किया है इसलिये स्टेटमेंट आफ क्लेम प्रस्तुत करके निवेदन किया गया है कि श्रमिक के पक्ष में यह पंचाट जारी किया जाय कि नियोजक बैंक का छुट्टी आदेश दिनांक 4-5-93 अवैध है और उसे निरस्त किया जाकर श्रमिक को पुनः 5-5-93 से कार्यभार संभालने तक पूर्ण वेतन व अन्य लाभ दिये जाय। उसे कार्यभार संभालने तक निर्दिष्ट वेतन श्रुंखला भी दिलायी जाय और पिछले वेतन पर 18 प्रतिशत सालाना की दर से व्याज भी दिलाया जाय।

3. अप्रार्थी नियोजक ने इस स्टेटमेंट आफ क्लेम का जवाब पेश कर प्रारम्भिक आपत्तियों के रूप में कहा है कि केन्द्रीय सरकार द्वारा प्रेषित विवाद में मध्य आंचलिक कार्यालय ही पक्षकार है जबकि श्रमिक ने शाखा प्रबन्धक को भी पक्षकार बना दिया है। नियोजक एक ही व्यक्ति

हो सकता है, दो नहीं हो सकते। जो अनुतोष मांगे गये हैं वह अनुतोष केन्द्रीय औद्योगिक न्यायाधिकरण देने के लिये समक्ष नहीं है। स्टेटमेण्ट ऑफ क्लेम सही फॉर्म के समक्ष प्रस्तुत नहीं हुआ है इसलिए श्रमिक कोई अनुतोष पाने का अधिकारी नहीं है। तथ्यों पर अपना जवाब प्रस्तुत करते हुए नियोजक ने यह कथन किया है कि श्रमिक को दिनांक 3-9-92 के आदेश पत्र क्रमांक 143/8370 के द्वारा नियुक्ति दी गयी थी, श्री चैनसिंह द्वारा बैंक से कार्यभार संभालने पर श्रमिक को कार्यमुक्त कर दिया गया, श्रमिक की अनुचित एवम् अप्रभावी रूप से छंटनी करके उसे कार्यमुक्त नहीं किया गया है। नियोजक बैंक ने जो छंटनी का आदेश दिया है—यह अवैध, अनुचित, अप्रभावी एवम् अवैधानिक नहीं है, अधिनियम के किसी प्रावधान का उल्लंघन करते हुए छंटनी नहीं की गयी है। श्रमिक प्रारंभ से ही जानता था कि चैनसिंह के न आने पर उसको अस्थायी रूप से नियुक्त किया गया है और उसके आने ही उसका कार्य समाप्त हो जायेगा; अर्थात् श्रमिक की सेवावधि निश्चित अवधि अर्थात् चैनसिंह के आने तक की थी, श्रमिक ने यह तथ्य छुपाया है कि श्री चैनसिंह के विरुद्ध पुलिस केस हो जाने के कारण वह दिनांक 3-9-92 से 19-3-93 तक एन०डी०पी०एस० अधिनियम के अन्तर्गत न्यायिक अभिरक्षा में था, दिनांक 20-3-93 से 13-4-93 तथा 16-4-93 से 3-5-93 तक वह कार्य पर नहीं आया, चैनसिंह की अनुपस्थिति में कार्य करने के लिये श्रमिक को विलुक्त अस्थायी तौर पर रखा गया था व उसकी सेवा निश्चित अवधि व निश्चित कार्य के लिये थी। औद्योगिक विवाद अधिनियम की धारा 2(००)(दी०दी०) के अन्तर्गत ऐसी शैक्षणिक जिसमें श्रमिक की सेवायें पूर्व ज्ञात समाप्त होने पर नवीनीकरण नहीं की गयी हो तो रिट्रेन्चमेण्ट की परिभाषा में नहीं आती है। अतः श्रमिक की सेवायें अस्थायी थी और निश्चित अवधि के लिये निश्चित कार्य के लिये थी, चैनसिंह के वापिस नियोजन में आने से उसकी सेवायें समाप्त कर दी गयी जो पूर्णतः उचित है। अतः प्रार्थी द्वारा प्रस्तुत किया गया स्टेटमेण्ट ऑफ क्लेम खारिज कर खर्चा दिलाया जाये।

4. पक्षकारों ने अपने-अपने अभिवचनों के समर्थन में शपथपत्र द्वारा माध्य पेश की है। प्रार्थी मदनलाल ने अपना शपथपत्र पेश किया है तथा साथ में प्रदर्श डबल्यू-1 तथा प्रदर्श डबल्यू-15 की फोटों प्रतियां पेश की हैं। इसके खण्डन में नियोजक का और से योधराज एम्-1 के जनादेश के शपथपत्र पेश हुए तथा दस्तवेजी सबूत में प्रदर्श एम-1 पेश किया गया है।

5. श्रमिक ने अपने शपथपत्र में कथन किया है कि श्रमिक को नियोजक बैंक में 3-9-92 को ग्रेटेंडर के पद पर नियुक्ति दी गयी जिसकी नियुक्ति का आदेश प्रदर्श डबल्यू-1 है। दिनांक 3-9-92 से 4-5-93 तक उसने बिना किसी व्यवधान के निरन्तर 240 दिन से अधिक का कार्य किया जिसका प्रमाणपत्र प्रदर्श डबल्यू-2 है। नियोजक बैंक के शाखा प्रबन्धक ने अपने आदेश दिनांक 4-5-93 के द्वारा

श्रमिक को तुरन्त प्रभाव से कार्यभार से मुक्त कर दिया जिसका छंटनी आदेश प्रदर्श डबल्यू-3 है। उसके नियुक्ति आदेश में श्री चैनसिंह श्रमिक के स्थान पर नियुक्ति करने का कोई उल्लेख नहीं है। श्रमिक ने इस सम्बन्ध में क्षेत्रीय श्रम आयुक्त (केन्द्रीय) श्रम मंत्रालय, भारत सरकार के समक्ष अपना औद्योगिक विवाद प्रस्तुत किया, औद्योगिक विवाद की प्रति प्रदर्श डबल्यू-4 है। नियोजक ने इस विवाद में अपना जवाब प्रस्तुत किया जो प्रदर्श डबल्यू-5 है। नियोजक ने छंटनी से पूर्व उसे एक माह का नोटिस या नोटिस की एवज में एक माह का वेतन भुगतान नहीं किया और न छंटनी मुआवजा दिया है, कोई बरिष्ठता सूची भी जारी नहीं की और न श्रमिक को अधिशेष घोषित किया है। श्रमिक ने इस नियोजन से पूर्व स्टेट बैंक ऑफ पटियाणा श्रीगंगानगर एवम् श्रीगंगानगर क्षेत्रीय बैंक में कार्य किया था, नियोजक बैंक ने इन अनुभव प्रमाणपत्रों के आधार पर ही उसे बैंक में नियोजित किया था, नियोजक बैंक ने अधिकारियों ने समय-समय पर श्रमिक का यह आवासन दिया था कि उसका नियोजन जारी रहेगा, अन्य बैंकों के अनुभव प्रमाणपत्र प्रदर्श डबल्यू-7 व 8 है। श्रमिक ने नियोजक बैंक के अधिकारियों के आवासन के आधार पर थल सेना व वायु सेना के द्वारा बुलाये गये साक्षात्कार में अपनी उपस्थिति नहीं दी, साक्षात्कार के सूचनापत्र प्रदर्श डबल्यू-9 व 10 हैं। श्रमिक की छंटनी के बाद भी उसने नियोजक बैंक में विभिन्न तिथियों पर कार्य किया जिसके प्रमाणपत्र प्रदर्श डबल्यू-11 से 14 हैं। श्रमिक का सामला आंचलिक कार्यालय अहमदाबाद में आयोजित नियोजक बैंक व यूनियन के पदाधिकारियों की द्वि-पक्षीय बैठक में भी उठाया गया था मगर नियोजक बैंक ने स्पष्ट रूप से नियोजन करने से इंकार कर दिया, बैठक की कार्यवाही प्रदर्श डबल्यू-15 है।

6. इसके खण्डन में योधराज का अपने शपथपत्र में कथन है कि वह मिण्टीफेड बैंक श्रीगंगानगर में मई 91 से मई 94 तक मैनेजर व अधिकारी के रूप में कार्यरत रहा था। नियोजक के अधीन श्री चैनसिंह एक कर्मचारी था जो एन०डी०पी०एस० अधिनियम के अन्तर्गत गिरफ्तार हो गया था, वह दिनांक 3-9-92 से 19-3-93 तक न्यायिक अभिरक्षा में रहा, दिनांक 20-3-93 से 13-4-93 एवम् 16-4-93 से 3-5-93 तक वह ड्यूटी पर नहीं आया इस प्रकार वह दिनांक 3-9-92 से 3-5-93 तक नियोजक के यहां कर्तव्य पर उपस्थित नहीं हुआ, चैनसिंह की अनुपस्थिति में कार्य करने के लिये श्री मदनलाल श्रमिक को पूर्ण रूप से अस्थायी तौर पर निश्चित अवधि के लिये नियुक्त किया गया था। इस सम्बन्ध में नियुक्ति आदेश प्रदर्श एम-1 जारी किया गया। सेवा मुक्ति आदेश प्रदर्श डबल्यू-3 है, प्रदर्श एम-1 और प्रदर्श डबल्यू-3 में स्पष्ट लिखा है कि श्रमिक को अस्थायी रूप से रखा गया था जब चैनसिंह वापिस अपने कर्तव्य पर आ गया तो श्रमिक की कोई आवश्यकता नहीं रह गयी थी। इसी प्रकार की बात के० जनार्दन ने भी

अपने शपथपत्र में बयान की है। दोनों पक्षों के शपथपत्रों पर एक-दूसरे पक्ष की ओर से जिरह की गयी है।

7. बहस मूनी गयी एवम् पत्रावली का अवलोकन किया गया। मेरे सामने प्रस्तुत मामले में निम्नलिखित विचारणीय बिन्दु हैं:

- (1) क्या श्रमिक "औद्योगिक कर्मकार" की परिभाषा में आता है और नियोजक "उद्योग" की परिभाषा में आता है?
- (2) क्या श्रमिक की सेवामुक्ति अधिनियम की धारा 25-एफ की पालना किये बिना की गयी है और यदि ऐसा है तो श्रमिक किस सहायता का पात्र है?

इन बिन्दुओं पर दोनों पक्षों के विद्वान अधिवक्ताओं ने बहस की है। लेकिन, इससे पूर्व नियोजक के विद्वान अधिवक्ता ने कुछ कानूनी व तकनीकी बिन्दुओं पर भी अपने तर्क प्रस्तुत किये हैं। विद्वान अधिवक्ता नियोजक का तर्क है कि केन्द्रीय सरकार ने यह प्रसंग औद्योगिक अधिकरण, बीकानेर को अधिनिर्णय हेतु प्रेषित किया था, लेकिन श्रमिक ने अपना स्टेटमेंट आफ क्लेम औद्योगिक विवाद अधिकरण के समक्ष पेश न करके श्रम न्यायालय, बीकानेर के समक्ष पेश किया है क्योंकि उसने अपने स्टेटमेंट आफ क्लेम के ऊपर ही श्रम न्यायालय को सम्बोधित करते हुए यह क्लेम लिखा है, इसी प्रकार जो साक्ष्य पेश हुई है वह साक्ष्य भी श्रम न्यायालय को ही सम्बोधित करके पेश की गयी है जबकि यह सम्बोधन औद्योगिक विवाद अधिकरण को किया जाना चाहिये था — इस प्रकार श्रमिक ने गलत फॉर्म में अपना स्टेटमेंट ऑफ क्लेम और साक्ष्य पेश किया है। विद्वान अधिवक्ता श्रमिक ने इस गलती को स्वीकार किया है लेकिन यह तर्क भी प्रस्तुत किया है कि यह तकनीकी गलती है और इस गलती के आधार पर श्रमिक का क्लेम खारिज कर देना किसी भी प्रकार से न्यायपूर्ण नहीं होगा। मैं, विद्वान अधिवक्ता श्रमिक के इस तर्क से सहमत हूँ। यह अवश्य है कि श्रमिक ने अपना स्टेटमेंट ऑफ क्लेम और शपथपत्र श्रम न्यायालय को ही सम्बोधित किये हैं किन्तु इस तकनीकी गलती के कारण श्रमिक के क्लेम को पूर्ण रूप से खारिज कर देना किसी भी तरह से न्यायसंगत नहीं है। यहाँ, यह उल्लेखनीय है कि यह मामला औद्योगिक विवाद अधिकरण के अन्तर्गत दर्ज हुआ है और नियोजक ने अपना जवाब तथा साक्ष्य अधिकरण को ही सम्बोधित किया है इसलिये प्रार्थी द्वारा जो छोटी सी भूल की गई है उसका परिणाम उसके क्लेम को खारिज करने के रूप में नहीं हो सकता।

8. इसके अलावा नियोजक के विद्वान अधिवक्ता ने यह तर्क प्रस्तुत किया है कि केन्द्रीय सरकार ने केवल सिण्डिकेट बैंक को ही विवाद का पक्षकार बनाया था किन्तु श्रमिक ने सिण्डिकेट बैंक जरिये आंचलिक प्रबन्धक, अहमदाबाद और शाखा प्रबन्धक सिण्डिकेट बैंक, श्रीगंगानगर दोनों को पक्षकार बनाया है जो उचित नहीं है। मेरे विचार में यह

आपत्ति भी महत्व नहीं रखती है और इस आधार पर भी श्रमिक का क्लेम खारिज करने योग्य नहीं है।

9. इसके अतिरिक्त नियोजक के विद्वान अधिवक्ता का यह तर्क भी है कि केन्द्रीय सरकार ने जो प्रसंग इस अधि-करण को प्रेषित किया है वह अधिनियम की धारा 10(1)(ओ) के अन्तर्गत प्रेषित नहीं किया जा सकता था। विद्वान अधिवक्ता का तर्क यह है कि जो विवाद केन्द्रीय सरकार ने प्रेषित किया है वह सेवामुक्ति से सम्बन्धित है और अधि-नियम में दी गयी द्वितीय अनुसूची के आईटम नं० (3) के अनुसार इस प्रकार का मामला केवल श्रम न्यायालय को ही अधिनिर्णय के लिये प्रेषित किया जा सकता है, तृतीय अनुसूची में जो मामले दर्शाये गये हैं केवल वही मामले औद्योगिक विवाद अधिकरण में अधिनिर्णय हेतु प्रेषित किये जा सकते हैं — उस अनुसूची में सेवामुक्ति का मामला सम्मिलित नहीं है। आईटम नम्बर (10) में कर्मकारों की छंटनी का मामला अवश्य सम्मिलित है लेकिन यह मामला अभी अधि-निर्णय के लिये प्रेषित किया जा सकता है जबकि कर्मकारों की छंटनी के साथ-साथ संस्थान का बन्द होना भी विवाद का विषय हो। चूँकि तृतीय अनुसूची में केवल सेवामुक्ति का मामला सम्मिलित नहीं है इसलिये केन्द्रीय सरकार औद्योगिक विवाद अधिनियम की धारा 10(1)(डी) के अन्तर्गत यह मामला इस अधिकरण में प्रेषित नहीं कर सकती थी इस प्रकार में यह प्रसंग कानून के अनुकूल नहीं है और इस आधार पर चलने योग्य नहीं है। इसके विपरीत विद्वान अधिवक्ता श्रमिक का तर्क है कि अधिनियम की धारा 10(1)(डी) के अनुसार अधिनियम की द्वितीय अनुसूची और तृतीय अनुसूची में भी उल्लेखित प्रश्न अधिनिर्णय हेतु प्रेषित किया जा सकता है। तृतीय अनुसूची में आईटम नम्बर (10) में कर्मकारों की छंटनी का मामला अंकित है इसलिये केन्द्रीय सरकार ने उचित रूप से यह मामला अधिकरण को प्रेषित किया है। विद्वान अधिवक्ता नियोजक की यह दलील माने जाने योग्य नहीं है।

10. मैंने, दोनों पक्षों की बहस पर विचार किया। विद्वान अधिवक्ता नियोजक द्वारा प्रस्तुत किया गया तर्क बलहीन पाया जाता है, अधिनियम की धारा 10(1)(डी) के अन्तर्गत समुचित सरकार औद्योगिक अधिकरण को द्वितीय व तृतीय अनुसूची में वर्णित विवादों से सम्बन्धित विवाद प्रसंग द्वारा अधिनिर्णय हेतु प्रेषित करने में सक्षम है। द्वितीय अनुसूची में क्रम सं० 3 में कर्मकारों के dismissal discharge का मामला पुनः पदस्थापना व अन्य उचित सहायता प्रदान करने के बिन्दु विवाद हेतु प्रेषित किये जाने योग्य है वैसे तृतीय अनुसूची में भी क्रम सं० 10 पर छंटनी का विवाद प्रेषित किये जाने योग्य है। अतः समुचित सरकार द्वारा प्रसंग उचित रूप से किया गया प्रतीत होता है। अतः विद्वान अधिवक्ता नियोजक के इस तर्क में कोई बल नहीं है और उनकी यह आपत्ति स्वीकार होने योग्य नहीं है।

11. अब, जहाँ तक गुण-दोष का प्रश्न है तो सर्व-प्रथम यह बिन्दु विचार योग्य मानने आता है कि क्या

श्रमिक "औद्योगिक कर्मकार" की परिभाषा में आता है। सर्वप्रथम तो यह कहना उचित होगा कि इस बारे में मेरे समक्ष कोई वहम नहीं की गयी है कि श्रमिक "औद्योगिक कर्मकार" की परिभाषा में नहीं आता, फिर भी बगलौर वाटर मालाई के मामले में प्रतिपादित सिद्धान्तों पर विचार करते हुए यदि हम देखते हैं तो बँक एक उद्योग की परिभाषा में आता है और श्रमिक मदनलाल उसके वेतन के बढ़ते में बैंक में नियोजित किया गया था इसलिये उसे अधिनियम की धारा 2(एम) के अनुसार कर्मकार कहना उचित होगा।

12. अब, दूसरा प्रश्न यह पैदा होता है कि क्या श्रमिक ने अपने सेवाकाल के 240 दिन पूरे कर लिये थे तो इस बारे में पक्षकारों के मध्य कोई विवाद नहीं है। श्रमिक दिनांक 3-9-92 से 4-5-93 तक बिना किसी व्यवधान के नियोजक के अधीन कार्यरत रहा था—इस बात को अप्रार्थी नियोजक ने भी स्वीकार किया है। प्रदर्श डब्ल्यू-2 के अनुसार श्रमिक ने इस अवधि में 241 दिन कार्य किया है। अतः श्रमिक द्वारा 240 दिनों से अधिक कार्य करना साबित है। यह तथ्य भी निश्चित है कि श्रमिक को प्रदर्श डब्ल्यू-3 के द्वारा सेवा-मुक्त कर दिया गया और उसकी सेवायें दिनांक 4-5-93 से समाप्त कर दी गयीं अर्थात् 5-5-93 से वह नियोजक के अधीन सेवारत नहीं रहा। यह तथ्य भी निश्चित है कि श्रमिक को सेवा में हटाने समय अधिनियम की धारा 25-एफ की पालना नहीं की गयी। इस स्तर पर नियोजक के विद्वान अधिवक्ता का तर्क यह है कि श्रमिक की नियुक्ति पूर्णतया अस्थाई तौर पर की गयी थी और उसकी नियुक्ति एक निश्चित अवधि के लिये थी अर्थात् चैनसिंह नामक कर्मचारी के पुलिस व न्यायिक अभिरक्षा में रहने व अवकाश पर रहने के कारण उसकी नियुक्ति हुई थी और जब चैनसिंह अपने कर्तव्य पर पुनः उपस्थित हो गया तो उसकी नियुक्ति समाप्त कर दी गयी। ऐसी स्थिति में कर्मकार को अधिनियम की धारा 25-एफ का लाभ दिया जाने की कोई आवश्यकता नहीं थी। कर्मकार की सेवामुक्ति अधिनियम की धारा 2(00)(बी.बी.) के अन्तर्गत की गयी है इसलिए धारा 25-एफ की पालना करना कोई आवश्यक नहीं था इसलिये श्रमिक ने तो पुनः सेवा में आने का अधिकारी है और कोई पिछला वेतन व अन्य लाभ पाने का अधिकारी है। विद्वान अधिवक्ता ने इस सम्बन्ध में मेरा ध्यान प्रदर्श एम-1 के नीचे अंकित पृष्ठांकन की ओर दिलाया है और उसे बताकर यह तर्क प्रस्तुत करने की चेष्टा की गयी है कि इस पृष्ठांकन में श्रमिक की नियुक्ति पूर्णतया निश्चित समय के लिये किया जाना साबित है और ऐसे प्रकरण में अधिनियम की धारा 25-एफ की पालना करना आवश्यक नहीं है, इस सम्बन्ध में उन्होंने ए०आई०आर० 1996 सुप्रीम कोर्ट 1001:स्टेट आप. राजस्थान तथा अन्य बनाम रामेश्वरलाल गहलोत का न्यायदृष्टान्त पेश किया है। दूसरी ओर विद्वान अधिवक्ता श्रमिक का तर्क है कि प्रदर्श एम-1 से कहीं परिलक्षित नहीं होता है कि श्रमिक की नियुक्ति एक निश्चित अवधि के लिये की गयी थी बल्कि इसमें तो

एक बात होती है कि श्रमिक की नियुक्ति अनिश्चित काल के लिये हुई थी और श्रमिक ने 240 दिन पूरे कर लिये हैं इसलिये उस पर अधिनियम के अन्य सभी प्रावधान लागू होते हैं। मैंने, विद्वान अधिवक्तागण के तर्कों पर विचार किया। विद्वान अधिवक्ता नियोजक के तर्क को भली भाँति समझने के लिए यह आवश्यक होगा कि प्रदर्श एम-1 और प्रदर्श डब्ल्यू-1 का उत्तर दिया जाए। प्रदर्श डब्ल्यू-1 इस प्रकार है:

"मिडिकेट बँक

नं०प०/Ref. No. 143/8370/SGNR

Mr. Madanlal Verma,
Quarter No. G/1/48,
Sugar Mill Colony,
Sriganganagar.

Dear Sir,

You are hereby requested to do the work of Attender temporarily untill further orders.

Your faithfully,
Sd./- Manager.

प्रदर्श एम-3 में उपरोक्त इवारत व्यों की व्यों लिखी हुई है लेकिन उसके नीचे यह इवारत और अंकित है तथा इस इवारत के नीचे श्रमिक मदनलाल के हस्ताक्षर हैं:

Copy to : Divisional Manager.

D. O. Ahmedabad.

Dear Sir,

At present one of our Attender is on leave and moreover many of works are pending we are appointing the above person as Temporary Attender, Hope that you will approve our action.

Yours faithfully
Sd./- Manager.

ऐसा प्रतीत होता है कि प्रदर्श डब्ल्यू-1 और प्रदर्श एम-1 एक ही प्रोसेस में तैयार किये गये दस्तावेज हैं लेकिन श्रमिक ने जो दस्तावेज पेश किया है वह प्रदर्श डब्ल्यू-1 है उसके नीचे प्रदर्श एम-1 वाला पृष्ठांकन मौजूद नहीं है। श्रमिक को जो दस्तावेज दिया गया है उसमें यह अंकित है कि श्रमिक को अटेंडर के पद पर आगाभी आदेश तक अस्थाई रूप से कार्य करने हेतु नियुक्त किया गया है, इस इवारत में यह कहीं नहीं लिखा हुआ है कि श्रमिक की नियुक्ति चैनसिंह के अवकाश पर होने या पुलिस अथवा न्यायिक अभिरक्षा में होने के कारण की गयी है। प्रदर्श एम-1 में जो पृष्ठांकन किया गया है वह डिविजनल मैनेजर, अहमदाबाद को इस आशय के साथ किया गया है कि वर्तमान में बैंक में नियुक्त अटेंडर छुट्टी पर है और बहुत सारा काम लम्बित है इसलिये एक व्यक्ति को अस्थायी रूप से अटेंडर के पद पर नियुक्त किया गया है अतः इस नियुक्ति की पूर्ण की जाय। इस पूरे दस्तावेज को पढ़ने से यह

कहीं प्रकट नहीं होता है कि श्रमिक मदनलाल की नियुक्ति किसी निश्चित अवधि के लिये की गयी हो, उसकी नियुक्ति आगामी आदेश तक करने का उल्लेख अवश्य है लेकिन आगामी आदेश तक की नियुक्ति को हम निश्चित अवधि की नियुक्ति नहीं मान सकते। इस प्रकार प्रवर्ष एम-3 में यह भी अंकित नहीं है कि श्रमिक की नियुक्ति चैनसिंह के अभिरक्षा में होने अथवा अवकाश पर होने के कारण की जा रही है इसलिये मेरे विचार में प्रवर्ष एम-1 द्वारा की गयी नियुक्ति किसी भी प्रकार से निश्चित अवधि के लिये की गयी नियुक्ति नहीं मानी जा सकती और माननीय उच्चतम न्यायालय का जो न्यायदृष्टान्त पेश किया गया है वह यहां लागू नहीं होगा। माननीय उच्चतम न्यायालय के समक्ष जो मामला था उसमें प्रकट रूप से तीन महीने अथवा नियमित रूप से चयनित अभ्यर्थी के द्वारा कार्यभार ग्रहण करने तक नियुक्ति दी गयी थी किन्तु हमारे समक्ष जो मामला है उसमें यह स्थिति नहीं है, इसमें कोई निश्चित अवधि नहीं बतायी गयी है जिसके लिये नियुक्ति दी गयी है और यह भी नहीं बताया गया है कि चैनसिंह के अवकाश पर से लौटने तक यह नियुक्ति प्रदान की गयी है। यहां यह उल्लेखनीय है कि चैनसिंह एन०बी०पी०एस० के मामले में गिरफ्तार हुआ था, उस मामले में यह निष्कर्ष निकालना मुश्किल है कि चैनसिंह की जमानत कब होगी और कब वह अभिरक्षा से जमानत पर आजाद होगा और यह भी निश्चित नहीं है कि वह जमानत पर आजाद होगा या उसे सजा होगी। इसलिये यदि कुछ समय के लिये मान भी लें कि श्रमिक को इस बात का ज्ञान था कि चैनसिंह के स्थान पर उसे नियुक्त किया गया है तो यह नियुक्ति कब तक रहेगी यह निष्कर्ष निकालना उसके लिये मुश्किल था क्योंकि वह ऐसे मामले में अभिरक्षा में बन्द था जो काफी गम्भीर था और श्रमिक यह निष्कर्ष नहीं निकाल सकता था कि वह अभिरक्षा से कब आजाद होगा। यदि श्रमिक की नियुक्ति के आदेश में किसी निश्चित अवधि का उल्लेख होता या चैनसिंह के लौटने तक का आदेश होता तो स्थिति भिन्न हो सकती थी किन्तु प्रस्तुत मामले में ऐसा कोई उल्लेख नहीं है इसलिये मेरे विचार में श्रमिक की इस नियुक्ति को निश्चित अवधि के लिये की गयी नियुक्ति मानना उचित नहीं होगा और उसकी छंटनी अधिनियम की धारा 2(00) (बी०बी०) के अन्तर्गत नहीं आवेगी।

13. श्रमिक ने अपने सेवकाल के 240 दिन पूरे कर लिये, उसे दिनांक 4-5-93 को सेवा-मुक्त कर दिया गया लेकिन सेवामुक्ति के पूर्व अधिनियम की धारा 25-एफ की पाबन्दी नहीं की गयी, उसको न तो एक माह पूर्व का नोटिस दिया गया और न नोटिस के बदले में वेतन दिया गया और न ही मुआवजा दिया गया है इसलिये श्रमिक की सेवा-मुक्ति का आदेश अवैध है।

14. अब, यह प्रश्न पैदा होता है कि श्रमिक किस सहायता का पात्र है। श्रमिक ने अपने स्टेटमेंट ऑफ क्लेम में यह कहीं नहीं कहा है कि वह सेवामुक्ति के दिन से

बेरोजगार है, उसने अपने शपथपत्र में भी यह बात कहीं नहीं कही है लेकिन शपथपत्र पर जिरह के दौरान उसने यह अवश्य कहा है कि वह अभी बेरोजगार है। मैं, विधि के इस सिद्धान्त से सचेत हूँ कि श्रमिक सेवामुक्ति के बाद किसी नियोजन में नहीं रहा—इस तथ्य को साबित करने का भार नियोजक पर होता है और जहां यह बात साबित हो कि श्रमिक की सेवामुक्ति अवधि रूप से की गयी हो तो फिर आमतौर पर श्रमिक को पिछले पूर्ण वेतन एवं परिलाभ दिलाये जाने का कानून है। नियोजक की ओर से भी ऐसी साक्ष्य पेश नहीं हुई है कि श्रमिक सेवा-मुक्ति के बाद कहीं काम पर रहा हो लेकिन स्वयं श्रमिक ने ही स्टेटमेंट ऑफ क्लेम तथा शपथपत्र में यह अंकित किया है कि सेवा-मुक्ति के पश्चात् भी वह दिनांक 17-5-93 से लेकर 3-9-94 तक विभिन्न तिथियों में 67 दिन तक नियोजक बैंक के अधीन नियोजित रहा है इसलिये श्रमिक सेवामुक्ति के पश्चात् सम्पूर्ण अवधि में बेरोजगार रहा है वह उसके इस कथन से ही पूर्ण सत्य नहीं माना जा सकता। इतना ही नहीं जैसा कि हमने देखा है कि प्रस्तुत मामले में श्रमिक को दिनांक 5-5-93 से सेवामुक्त किया गया है, 4-5-93 तक वह सेवा में था लेकिन उसने अपना विवाद समझौता अधिकारी के समक्ष विलम्ब से पेश किया है। प्रवर्ष डब्ल्यू-4 श्रमिक का ज्ञापन है जो उसने क्षेत्रीय श्रम आयुक्त (केन्द्रीय) अजमेर को दिनांक 1-6-94 को पेश किया है और इस दौरान वह अपने स्टेटमेंट ऑफ क्लेम के पैरा नम्बर (15) के अनुसार समय-समय पर नियोजक के अधीन नियोजन भी पाता रहा है इसलिये यह बात सुचारु रूप से प्रकट होती है कि श्रमिक ने अपना विवाद काफी विलम्ब से समझौता अधिकारी के समक्ष प्रस्तुत किया है इसलिये श्रमिक को पिछले सम्स्त वेतन व परिलाभों का संरक्षण दिलाया जाना उचित नहीं है। श्रमिक को इन परिस्थितियों को देखते हुए 50 प्रतिशत पिछले वेतन परिलाभ दिनाये जाने उचित होंगे।

15. अतः केन्द्रीय सरकार द्वारा प्रेषित प्रसंग का उत्तर इस प्रकार से दिया जाता है कि सिण्डिकेट बैंक अहमदाबाद के प्रबन्धतन्त्र द्वारा श्री मदनलाल वर्मा अटैण्डर (पीओन) (चपरासी) को 5-5-93 के प्रभाव से सेवामुक्त करना वैध एवम् न्यायपूर्ण नहीं है और श्रमिक निम्न सहायता का अधिकारी है:

- (1) श्रमिक 5-5-93 से पुनः नियोजन में आने का अधिकारी है और उसकी सेवा निरन्तर मानी जावेगी।
- (2) श्रमिक अधिनियम की तारीख से दिनांक 5-5-93 को दिये जाने वाले वेतन परिलाभ के अनुसंग वेतन परिलाभ पाने का अधिकारी है।
- (3) लेकिन, श्रमिक दिनांक 5-5-93 से अधिनियम की तारीख तक के वेतन व परिलाभों का 50 प्रतिशत भाग पाने का अधिकारी होगा। किन्तु 5-5-93 के बाद श्रमिक ने 67 दिन नियोजक

के अधीन कार्य किया है उक्त अवधि का वेतन इसमें बाद दिया जाये।

उक्त अधिनियम अधिनियम की धारा 17(1) के अन्तर्गत केन्द्रीय सरकार को प्रकाशनार्थ भेजा जाये।

16. आज्ञा आज दिनांक 27-12-97 को सरे इजलास लिखाई और सुनाई जाकर हस्ताक्षरित की गयी।

गुलाम हुसैन, न्यायाधीश

नई दिल्ली, 12 फरवरी, 1998

क्र. आ. 503.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्तर्गत में, केन्द्रीय सरकार केनरा बैंक के प्रबन्धन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलूर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 10-2-98 को प्राप्त हुआ था।

[सं. एन-12012/404/92-आईआर (बी-II)]

सनातन, डेस्क अधिकारी

New Delhi, the 12th February, 1998

S.O. 503.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Bangalore as shown in the Annexure to the Industrial Dispute between the employers in relation to the management of Canara Bank and their workman, which was received by the Central Government on 10-2-98.

[No. L-12012/404/92-IR(B-II)]

SANATAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated, this Thursday, the 29th day of January, 1998

PRESENT

Sr. K. Mohanachandran, B.Sc., B.L., D.L., A.L., Presiding Officer.

Central Reference No. 39 of 1993

I Party

U. Sudhakar Rao,
S/o U.J. Rao, Upoor,
Kudumbettur, Udipi Taluk,
Dakshina Kannada District,
Karnataka.

Vs.

II Party

M/s. Canara Bank,
Circle Office,
Staff Section,
Light House Hill Road,
Mangalore-575001.

AWARD

In this reference made by the Honourable Central Government under its Order No. L-12012/404/92-IR (B-II) dated 12-4-93 the point for adjudication has been framed as follows:—

"Whether the action of the management of Canara Bank in removing Sri Sudhakar Rao from service is justified? If not, to what relief is the concerned workman entitled to?"

(2) The (concise) averments of the 1st party made in claim statement are as follows:—

The 1st party joined the service of 2nd party as Clerk on 10-5-1984. The 1st party was not allowed to work from 5-6-91 stating that he had misappropriated a sum of Rs. 1,000 but no charge-sheet has been served on him. A confession statement regarding alleged misappropriation of a sum of Rs. 1,000 was obtained by force. The Investigation Officer who conducted the investigation had concluded that the alleged misappropriation was committed by the 1st party.

(3) The 1st party was informed about the conducting of domestic enquiry by the 2nd party as per their letter dated 17-9-91. Accordingly one Sri G. R. Malekar, who has been appointed as Enquiry Officer has issued a notice of enquiry dated 19-11-91 to the 1st party and the enquiry commenced on 7-12-91. But the 1st party was not given documents and list of witnesses well in advance and also he was not given full and fair opportunity to defend his case. Hence, the domestic enquiry was not conducted in accordance with principles of natural justice. The findings of the Enquiry Officer is not based on the materials placed before him and it is a perverse one which has to be rejected. Then the 2nd party as per the letter dated 20-1-92 removed the 1st party from service which is also arbitrary, unjust and unlawful.

(4) The 1st party was issued with a charge-sheet for the alleged misconduct and he was suspended from work with effect from 5-6-91 which is not valid. Therefore, the domestic enquiry and the dismissal order have to be rejected and the 1st party should be reinstated with all the benefits.

(5) The (brief) averments made in the written statement by the 2nd party are as follows:—

The 1st party was recruited from the panel of daily wagers and his name was deleted from the panel with effect from 20-1-92 and the same is not covered under section 2A of the Industrial Dispute Act. The 1st party also cannot question the act of deleting his name from the panel of daily wager under Section 2-A of the Industrial Dispute Act. He cannot demand to include his name as such. Therefore, the dispute raised by the 1st party is not maintainable. Moreover, the Government has no power to refer such dispute. Hence, the reference made is non-application of mind.

(6) The daily wagers are paid on daily basis. They are entitled for Sunday wage, if they work continuously from Monday to Saturday. The daily wager are not entitled for any of the benefits provided to permanent employee till they are absorbed as Sub-staff. The 1st party was working as daily wager in the various branches of Dakshina Kannada and, subsequently he was appointed as Sub-staff on 23-5-84.

(7) The 1st party while serving at Hampankatta Branch was entrusted with a sum of Rs. 2,000 to purchase stamps on 31-5-91. But the 1st party has handed over stamps only worth of Rs. 1,000 and stated that the balance stamp worth of Rs. 1,000 would be retained for the purpose of acknowledgement of share application. Later the 1st party neither produced the covers with stamps duly affixed nor the postal

stamps worth of Rs. 1,000. Thus, he has misappropriated a sum of Rs. 1,000. The 1st party admitted that he had utilised the amount for self and reimbursed the same together with a confessed statement. An investigation was conducted by the 2nd party in this regard. During the investigation also the 1st party gave confession statement. Therefore, as the misconduct was a grave one, the 1st party was not engaged as daily wager with effect from 5-6-91.

(8) A domestic enquiry was conducted on 7-12-91 and the 1st party had attended the enquiry. He was provided with documents on which the 2nd party had relied upon. The 1st party pleaded guilty of charge. The 1st party was given opportunity to engage any other person of his choice to defend his case. But he did not avail this opportunity for the reasons best known to him. The Management witnesses were examined in the presence of the 1st party and he was allowed to cross-examine them. But he did not do so despite providing the opportunity. Hence, the enquiry is fair and proper and was conducted in accordance with principles of natural justice. The Enquiry Officer based on documents, evidence and enquiry proceedings placed before him had arrived at his finding holding the 1st party guilty of charge. It is fair and reasonable. Thereafter, the 2nd party issued a letter dated 20-1-92 to 1st party stating that he was found guilty of the charge levelled against him. Then, his name was deleted from the panel of daily wagers. The said action is legal, valid and justified. The 1st party who indulged in such a serious misconduct is not entitled to any mercy or lenience.

(9) The 1st party being in the panel of daily wager cannot become workman. The confession statement regarding misappropriation of a sum of Rs. 1,000 was not obtained under duress. During enquiry the Enquiry Officer had given full opportunity to the 1st party to cross-examine the management witnesses. But the 1st party did not cross-examine them, moreover he informed the Enquiry Officer that he has nothing to cross-examine the management witnesses. The 1st party gave a statement in his own handwriting, admitting the serious misconduct committed by him. Therefore, the action of the 2nd party in deleting the name of the 1st party from the panel of daily wagers is legal, bona-fide, valid and justified. Hence the question of suspension does not arise as the 1st party was a daily wager from the panel of daily wagers, and hence he was not recruited from 5-6-91. As such the 1st party is not entitled for continuance of service or any other benefits. Therefore, the action of the 2nd party in removing the name of the 1st party from the panel of the daily wager is justified and he is not entitled for reinstatement, back wages or to any other benefits.

(10) The Government has misdirected itself in referring this case hence the reference is bad in law, not maintainable and has to be rejected.

(11) My predecessor on 14-9-93 after perusing the above said pleadings of both the parties have framed a preliminary point as to:

"Whether the 2nd party proves that it has held the domestic enquiry against the 1st party in accordance with law and principles of natural justice."

(12) On preliminary point the management had examined MWs. 1 and 2 and marked Exs. M1 to M24, whereas the employee had examined himself as WW1. But he has not marked any document on his side. After hearing counsel for both the side on the preliminary point, my predecessor on 13-5-94 passed an order and held that the domestic enquiry held against the 1st party was illegal and opposed to the principles of natural justice and accordingly he has set aside the domestic enquiry. In such circumstances, subsequently the management had examined MWs. 3 to 6 and further marked Exs. M26 to M29 and WW1 was recalled and further examined and Ex. 30 was marked during the cross-examination of MW-1.

(13) Subsequently I heard argument of both the side on merits. As I specified earlier, as per the schedule to the reference we have to consider the entire evidence placed before this Tribunal to find as to whether the action of the 491 GI '98—5

2nd party management of Canara Bank in removing Sri Sudhakar Rao from service is justified? If not, to what relief is the concerned workman entitled to?

(14) The evidence of MW-1 through whom the Exs. M1 to M18 had been marked in the domestic enquiry and the same exhibit number also had been given in this Tribunal would prove the misappropriation. The other Exs. M19 and M20 had been marked through MW-2 before this Tribunal. Ex. M-1 is the letter addressed to the 1st party by the management to inform him that a domestic enquiry would be conducted against him for alleged misappropriation of Rs. 1,000 while he was working at Hampankatta. Ex. M-2 is an order to appoint one Sri Malankar as Enquiry Officer to conduct the enquiry against the 1st party regarding the alleged misappropriation shown in Ex. M-1. On the basis of Ex. M-2 the Enquiry Officer had issued notice Ex. M-3 to the 1st party fixing a date of enquiry and accordingly the enquiry was conducted. He had submitted his report Ex. M-17.

(15) It had been contended by the 1st party that though he had been served Ex. M-1 notice dated 17-9-91 as an information that an enquiry was ordered against him regarding alleged misappropriation of Rs. 1000/-, he had not been specifically served any charge, and the management had not given any opportunity to submit his written reply regarding the alleged misappropriation. But the wordings of the Ex. M-1 would show that the management had informed the 1st party that a domestic enquiry will be conducted against the 1st party for the alleged misappropriation of Rs. 1000. Then subsequently the Enquiry Officer by issuing notice Ex. M-3 had informed the 1st party about the date of the enquiry. The 1st party in response to those Exs. M-1 and M-3 on 7-12-91 had submitted his explanation dated Ex. M-8 denying the charge of the management namely misappropriation of Rs. 1000/- by the 1st party. If we peruse the said Ex. M-8 the 1st party was given proper opportunity to explain his case to the management even before beginning of domestic enquiry. Therefore, it cannot be contended that the 1st party had not been given sufficient opportunities to explain his defence for the alleged charge of misappropriation of Rs. 1000/-. The main purpose of giving opportunity under the principles of natural justice could be that the affected party must be given opportunity to explain this case by way of defence to the charge or complaint whatever may be for the consideration of the management. Therefore, when the 1st party had given his full explanation Ex. M-8 to the Enquiry Officer in the domestic enquiry in which the 2nd party management had also participated, I am unable to agree with the learned counsel for the 1st party who had argued that the failure to issue specific charge would become fatal to the case of the management.

(16) When we peruse the evidence of MW-2 it would show that he had who directly given an evidence regarding the issuance of Ex. M-1 and about the nature of appointment given to the 1st party. According to the MW-2 the 1st party was appointed only as a daily wager based on Ex. M-19 (i.e.) a panel of daily wagers obtained from the department of Employment and Training and the 1st party was listed under the serial No. 7. Ex. M-22 is the order under which the 1st party was appointed as daily wager based in Ex. M-19. The MW-3 had proved about the act of misappropriation committed by the 1st party. At paragraphs 1 and 2 of his chief examination he had deposed as follows:

"I worked in Hampankatta branch from 1981 to Sept. 1991. I was a clerk there I was working in Over Draft section as a clerk. On 31-5-91 I was posted as tappal section clerk since clerk in tappal section was absent."

"1st party was a daily wager when I was working in the branch. I indented amount of Rs. 2000/- for purchase of postal stamps on 31-5-91. After receipt of cash, I gave it to 1st party to purchase stamps. The 1st party brought stamps worth Rs. 1000/-. When I asked him about remaining Rs. 1000/- stamps he said he was retaining those stamps with him, to affix to the share application forms acknowledgement. So I entered in the tappal register Ex. M-25 at page 174 as having handed over the stamps to shares department."

He further deposed at para 2 in page 2 as follows :

"This entry was made at page 174 because I party said he has retained the stamps worth Rs. 1000/- with him. 1st party was working in the shares section. By stating that stamps given to shares department is meant they were given to 1st party."

(17) The same witness MW-3 at para 3 had explained the mode of duties allotted to the 1st party and when MW-3 had asked the I party to show the covers on which he had affixed the stamps the I party failed to show the covers, but he had answered that he had already despatched those covers. Therefore, the above said specific evidence of the concerned clerk namely MW-3 would establish that though the I party was entrusted a sum of Rs. 2000/- for a specific purpose of stamps for office use, the I party had purchased only for an amount of Rs. 1000/- and falsely represented to MW-3 as if he had affixed the stamps to the value of Rs. 1000/-. The MW-3 had also given similar type of statement Ex. M-26 before the Enquiry Officer and it had corroborated his evidence. The above said combined versions of MW-3 had been corroborated by the MW-4 who had deposed that the MW-3 went to MW-4 who was in-charge of tappal section on 31-12-91 and informed MW-4 that the I party had retained stamps worth of Rs. 1000/-. The MW-4 deposed that when I party was asked about it he replied that he (I party) had affixed stamps in covers and despatched them. But on verification with tappal register Ex. M-25 it was found that no entry was made in Ex. M-25 and the said statement of I party was false and accordingly the MW-4 had given his statement Ex. M-13 to the Investigation Officer.

(18) Though the WW-1 in his evidence on 17-10-94 before this Tribunal had admitted in chief examination that Sri Gopal Naik i.e. MW-3 was a supervisor in tappal section on 31-5-91 and MW-3 gave Rs. 2000/- to WW-1 to bring postal stamps and accordingly he purchased the stamp worth Rs. 2000/- but handed over stamps only worth of Rs. 1000/- to Sri Gopal Naik, the MW-4 was suggested by the learned counsel for the I party, at para 3 as follows :

"It is not true to suggest that I did not enquire Anwar on any date prior to 4-6-91. The withdrawal slip for having drawn Rs. 2000/- has not been produced to Tribunal. It is not true to suggest that Rs. 2000/- was not given to I party on 31-5-91."

Hence, in such circumstances it is needless to say that any suggestion put by the learned counsel for the I party to the aforesaid witness it must be based on instructions given by the I party to his concerned Advocate. If that be so, the above said suggestion itself would expose the character of the I party that he was not telling true facts but given false versions even before the Tribunal.

(19) The above said conduct of the I party would also been exposed by his further contrary versions in his evidence. On 17-10-94 when he was examined in further chief examination he had given yet another three different answer regarding :

(a) utilisation of the said Rs. 2000/-.

(b) the mode of usage of stamp at the time of Rs. 1000 and

(c) the names of the supervisors.

Therefore, I am of opinion that his oral evidence towards his defence must be not only false but after thought with a view to escape from the clutches of the charge. Hence, it is clear that the evidence of MWs-3 and 4 would clearly prove that the I party was entrusted with Rs. 2000/- for purchase of stamps for official purpose but the I party had purchased stamps only to the worth of Rs. 1000/- but misappropriated the balance sum of Rs. 1000/-.

20. Further apart from the categorical evidence of MWs 3 and 4 the confessional statement of I party i.e. Exs. M-8, M-14 and M-28 would clearly establish that the I party had misappropriated a sum of Rs. 1000/- paid to him for the purpose of purchase of stamps but falsely given his report for official purpose.

21. Further the evidence of MW-5 would not only corroborately prove the Exs. M-28 and M-29 but also show

that Exs. M-28 confession had been written by the I party voluntarily and only based on his wordings in Ex-M-28 the I party repaid Rs. 1000/- under the voucher No. Ex. M-29. The repayment of Rs. 1000/- under Ex. M-29 by the I party would also substantiate the case of the management against the I party. As rightly pointed out by the learned counsel for the II party, if really, as alleged by the I party the said confession Exs. M-8 or M-14 or M-28 had been given by the I party only on any coercion or undue influence, he could not have repaid the said sum of Rs. 1000/- to the bank. So, the further conduct of WW-1, to repay Rs. 1000/- could be another piece of circumstantial evidence to show that the confession statement had been given by the I party voluntarily. Hence, I hold that repayment of Rs. 1000/- by the I party, vouched under Ex. M-29 would further strengthen the case of the II party namely, that the I party had misappropriated Rs. 1000/-.

22. The Investigation Officer MW-6 had further proved the confession statement of WW-1 namely Ex. M-14. His evidence would show that during his investigation the I party had given the Ex. M-14 confession voluntarily. He had also further proved his investigation report Ex. M-11 and his observation in his report namely Ex. M-11a.

23. Again it had been admitted by the WW-1 that even in his chief examination on 17-10-94, that Exs. M-8, M-14 and M-28 were confessions written in his own handwriting. A careful reading of those Exs. M-8, M-14 and M-28 (English translation) would reveal that the I party without any force or undue influence would have given those confession statements Exs. M-8, M-14 and M-28 writing them in his own language. Therefore, it is clear that though the WW-1 had retracted his confession Ex. M-14 and stated that he had been directed by MW-6 Sri. C. Sharoff to give such a confession under Ex. M-14, it had not been supported by any piece of evidence. Again he also admitted Ex. M-28. But he claimed that in his evidence that he was forced to give the said second confession namely Ex. M-28. But when we peruse the entire evidence of WW-1 it would be clear that the second confession also written in his own language namely Kannada. Therefore, the above detailed oral and documentary evidence would amply prove that the I party had misappropriated a sum of Rs. 1000/- entrusted by the II party for the official duty namely purchase of stamp.

24. As I pointed out earlier the domestic enquiry conducted by the Enquiry Officer and his report Ex. M-17 were set aside by this Tribunal. But as repeatedly guided by various Hon'ble Higher Courts and Hon'ble Supreme Court it is well settled principle that when a domestic enquiry was not conducted or the domestic enquiry is set aside the II party management had not right to establish the charge laid against its employee by letting further evidence. In such circumstances, the evidence of MWs 3 to 6 coupled with above specified relevant documents would establish that the I party had committed a misconduct and misappropriation of Rs. 1000/- entrusted to him by the II party bank. Therefore, I hold that the grave misconduct committed by the party had been properly and sufficiently proved by the II party bank.

25. Again when we consider the quantum of punishment namely order of dismissal issued by the II party to the I party for the misconduct of misappropriation of Rs. 1000/-, we have to further to discuss the evidence placed before the Tribunal Ex. M-19 is a list of names sent by the Department of Ex-employment Exchange for the post of peon and the name of the I party specified in Sl. No. 7 Ex. M-22 is an order of appointment issued to the I party and would show that on 10-4-84 he was appointed as daily wager based on the said list Ex. M-19. Apart from his pleading, the I party himself had admitted his misconduct in Ex. M-14. The documents filed by the management namely the investigation report Ex. M-11, statement given by the witnesses before the investigation Officer namely Exs. M-12, M-13 etc. and letter written by the I party to the Assistant Labour Commissioner viz. Ex. M-20 would also further substantiate that the I party was appointed only as daily wager. It had been further established by the management in Ex. M-24 that a daily wager must come to the bank daily and enquiry as to whether he would be given to any job on that particu-

lar day and if he succeeds in getting job he had to work on that particular day. If that be the nature of work given to I party by the bank. I am of the opinion that his job in no way come under the purview of "regular employee" and hence the I party cannot claim the same.

26. As I discussed supra, the management had amply proved that the I party being daily wager had misappropriated a sum of Rs. 1000/- It had been further established by the Investigation Officer as MW-6 coupled with his report Ex. M-11 and his remarks Ex. M-11a together with the statement of S. B. A/c. of I party, the I party will be in no way eligible for claiming mercy or sympathy on his family back ground. It had been repeatedly held by our Apex Court that misappropriation of fund entrusted by institution like banks to their workmen would be grave misconduct and dismissal alone will be proper punishment.

27. As pointed out by the learned counsel for II party, in AIR 1985 SC page 229 the Hon'ble Apex Court at para 7 had observed as follows :

"Having heard learned counsel, we are inclined to reiterate the view taken in Chandu Lal's case (AIR 1985 SC 1128) that the plea of loss of confidence in the employee indeed casts a stigma. As was pointed out in Roble v. Green, (1985) 2 QB 315 the employee is expected to promote the employer's interests in connection with which he has been employed and a necessary implication which must be engrafted on such a contract is that the servant undertook to serve his master with good faith and fidelity."

At para 9 the Hon'ble Apex Court had also observed as follows :

"Loss of confidence by the employer in the employee is a feature which certainly affects the character or reputation of the employee and, therefore, this court correctly held, in Chandu Lal's case that allegation of loss of confidence amounted to a stigma. The ratio in Jagdish Mitter's case AIR 1964 SC 449 also supports this conclusion."

And at para 10 also the Hon'ble Apex Court had observed that :

"Retrenchment as defined in S. 2(oo) of the Industrial Disputes Act and as held by this Court in several cases means termination of service for any reason whatsoever otherwise than punishment inflicted by way of disciplinary action and the other exceptions indicated therein. In the present case though no formal domestic inquiry had been held, the employer took the stand in the adjudication that termination was grounded upon loss of confidence and substantiated that allegation by leading evidence. The legal position firmly established is that if there has been no appropriate domestic enquiry or no enquiry at all before disciplinary action is taken, it is open to the employer to ask for such opportunity in the course of adjudication. In the facts of the present case, the order of separation grounded upon loss of confidence has been justified before the Labour Court and the Labour Court has come to that conclusion upon assessment of the evidence."

Their Lordships in the above said case had further observed at para 11 that :

"Whether termination is grounded upon stigma would not vary from case to case depending upon whether it involves a government servant or a workman. But the procedural safeguards appear to be different when termination is sought to be founded upon stigma. If disciplinary inquiry has not preceded the prejudicial order in the case of a Government servant the action would be bad while in the case of a workman the order could be justified even in the course of adjudication before the appropriate Tribunal under the Industrial Disputes Act even though no inquiry had been undertaken earlier."

28. It had been argued by the learned counsel for the 1st party that when the 1st party would become a workman under S. 2(s) of the I.D. Act and since he had been terminated without any compensation, the order of dismissal passed by the management has to be set aside. But as I pointed out earlier under Exs. M 19 and M-22 we could say that his employment could be called as unskilled as worded in the definition of "workmen" under S. 2(s) of I.D. Act. But the management had amply proved through proper evidence that the 1st party had misappropriated a sum of Rs. 1,000. Hence, on such a misconduct only he had been terminated by disciplinary action. Hence, S. 22-F will not be in any way play a part in favour of the 1st party. Therefore, I am unable to agree with the above said argument of the learned counsel for the 1st party.

29. It was further argued by the learned counsel for the 1st party that the other persons who also involved in the same type of misappropriation had not been caught and no punishment given to them, and so the punishment given to the 1st party could be nothing but victimisation and liable to be set aside. But the above said argument will not be based on any supportive materials. Mere pleading or argument to that effect alone cannot be a sufficient piece of materials to accept the above said argument. That apart the delinquent employee cannot escape from his liability by saying that since because other persons had not been punished. Therefore, I am unable to countenance the above said argument.

30. As correctly pointed out by the learned counsel for the 2nd party relying on a ruling of Hon'ble High Court of Karnataka reported in 1995(1) LLJ page 233 (Bank of India v. D. Padmanabhadu and another) when the 1st party had dishonestly misappropriated a sum of Rs. 1,000 and thus committed a grave misconduct on money entrusted he cannot pray any sympathy from any court saving other delinquent workmen of same nature had not been punished. In the above cited decision of Hon'ble High Court of Karnataka His Lordship at para 6 had observed as follows :

"The bank is the custodian of the money of the customers and cashier is a person who deals with the money and he must be more diligent and honest and justify the trust reposed in him by the bank and by the customers. If once the customers lose the confidence in the dealings, the entire organisation suffers and confidence of the customers is the basis on which the entire edifice of the banking system is built. The learned judge has assigned the reason that the money misappropriated by the first respondent has been paid back to the customers and it is the amount of the customers and not of the bank. The judge has lost sight of the principle that the intentional temporary retention of the money which does not belong to a person is also a misappropriation. Mere repayment will not absolve the liability or the misconduct committed by the first respondent. When once the money is put in bank by the customer, the bank owes a duty to repay and the reasoning that it is the money of the customer and not of the bank is a perverse reasoning...."

In the same judgement at para 8 His Lordship further pointed out that :

"Setting aside the dismissal of the first respondent and reinstating him may demoralize the petitioner organisation and breed indiscipline. This is not a case where certain trivial misconduct is committed. His intention is exhibited by false entries and the act of misappropriation has been proved by overwhelming evidence and admissions. The interest of an individual cannot override or be compromised when it is a question of maintaining discipline in a banking organisation."

His Lordship had also decided at para 5 that :

"The interference with the decision of the employer will be justified only when the enquiry is unfair or the findings arrived at in the enquiry are perverse or

have no basis in evidence or the management is guilty of victimisation, unfair labour practice or mala fide or the punishment is harsh and oppressive....."

"..Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, has to give an opportunity to the employer and employee to adduce evidence for the first time justifying his action. Once misconduct is proved, either in the enquiry conducted by the employer or by the evidence placed before the Tribunal, the punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is harsh and oppressive."

31. Therefore, on the above discussed evidence placed by the management coupled with own admission of the 1st party by way of his voluntarily confession statement the 2nd party amply proved that the 1st party had committed grave misconduct involving misappropriation of Rs. 1,000. Hence, from the materials placed before me and based on the above said rulings of our Hon'ble Apex Court and Hon'ble High Court of Karnataka I hold that the 1st party is not entitled to get any benefits under S. 11-A of the I.D. Act and therefore he is not entitled for any relief under the reference in question.

32. All other documents and evidence not referred to by me are not relevant, and in any case they do not alter the conclusion arrived by me above.

AWARD

In the result the C.R. No. 30/93 is rejected holding that the action of the 2nd party management of Canara Bank in removing the 1st party Sri U. Sudhakar Rao from service is justified. It is ordered that each party has to bear their own cost. Submit to Government.

33. (Dictated to P.A. transcribed by him, corrected by me and signed on this 29th day of January, 1998 Thursday).

K. MOHANACHANDRAN, Presiding Officer

नई दिल्ली, 12 फरवरी, 1998

का.आ. 504.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पारदीप पोर्ट ट्रस्ट के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, भुवनेश्वर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-2-98 को प्राप्त हुआ था।

[सं०एल-38011/2/85-डी-IV(ए)आई.आर. (विधि)]
बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 12th February, 1998

S.O. 504.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Bhubaneswar as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Paradip Port Trust and their workman, which was received by the Central Government on the 12-2-1998.

[No. L-38011/02/85-D. IV(A)/I.R. (Misc.)]
B. M. DAVID, Desk Officer.

ANNEXURE

INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

PRESENT :

Shri M. R. Behera, O.S.J.S. (Sr. Branch),
Presiding Officer, Industrial Tribunal,
Orissa, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 2 OF 1990 (CENTRAL)

Dated, Bhubaneswar, the 31st January, 1998.

BETWEEN

The management of Paradip Port Trust, P. O.
Paradip, District : Cuttack.

.. First Party—Management.
AND

Their workmen represented through Paradip
Bhandar Shramik Union, Sector-21, Para-
dip Port—754 142. District : Cuttack.

&

Paradip Port Shramik Sangha, Paradip.

..Second Party—Workmen.

APPEARANCES :

Shri H. K. Mohanty, Dy. Secretary—For the
First Party—Management.

Shri S. K. Dalai, General Secretary of the
Union.—For the Paradip Bandar Shramik
Union.

Shri Ram Shankar Ram, General Secretary of
Sangha—For the Paradip Port Shramik
Sangh.

AWARD

The Government of India in the Ministry of Labour in exercise of powers conferred upon them by clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), have referred the following dispute for adjudication by this Tribunal vide their Order No. L-38011/2/85/D. IV(A)/IR (Misc.), dated : 12th January, 1990 :—

"Whether the action of the management of Paradip Port Trust in not extending the facilities to Shri Kaibalya Badlia and 638 others casual labourers, as has been extended to Class-III and Class-IV employees of Paradip Port Trust and listed employees of Paradip Port Trust Cargo Handling Scheme, 1979 as per the National Wage settlement arrived at between Government of India in the Ministry of Shipping and Transport and All India Port and Dock Worker's Federation, Port, Dock and Waterport Worker's Federation of India on the issues of wage revision and liberation of terms and conditions or employment of Port and Dock Workers at the Major Ports on 4-1-1981 and 11-4-1984,

is legal and justified ? If not, what relief the workmen are entitled to ?”

2. Paradip Bandar Shramik Union (hereinafter referred to as the 'Shramik Union') have filed their claim statement on the averment that :

Paradip Port Trust was declared as a Major Port Trust in April, 1966. For attending casual nature of work of the Paradip Port Trust, the Trust authorities initially engaged some contractors, who in their turn engaged the workers who were commonly known as 'daily-labourers' on roll. From 1-11-1980 these daily labourers on roll then numbering 553 were brought under the direct control and supervision of the Paradip Port Trust giving a good-bye to the system of engagement through contractors. From 1-11-1980 the daily wage of the casual labourers ear-marked in the category of unskilled, skilled or ministerial jobs have undergone revision from time to time till 1-8-1989. These workers were hereafter called as the casual labourers on roll. A casual labourer is doing the work similar to that of the regular/permanent employee of the Paradip Port Trust. The casual labourers urged for those benefits as were agreed in the settlement dated 4-1-1981 reached between the Central Government and the representatives of the four National level federations of the Port and Dock Workers at Major Ports concerning the permanent employees of the Major Port Trusts.

Paradip Port Trust authorities remained in different for which the Regional Labour Commissioner (Central) was moved on the ground that the casual labourers revision of pay and other benefits are to be at par with the settlement dated 4-1-1981 and 11-4-1984 as aforesaid. They also served strike notice on 12-10-1984. The conciliation failed on 21-12-1984. The Government of India remained passive, whereafter the Hon'ble High Court of Orissa was moved. On 11-12-1989, the Government of India was directed to refer the dispute whereafter the aforesaid dispute has been referred to this Tribunal.

For revision of wage structures concerning the Port and Dock Workers at major ports, the recommendation of the wage Board has been accepted from time to time i.e., central wage board has been constituted from time to time, so also, several settlements were entered into between the Government of India and different trade unions, the last settlement originated on 4-1-1981 and 11-4-1984. These settlements ought to have been implemented by the Port Trust authorities for different categories of casual labourers, namely, Khalasi, Helper, Typist, Carpenter, Gateman, Sweeper, Fitter, Painter, Mechanic, Diesel Mechanic, Tinsmith, Welder, Auto-Electrician, Electrician, Wireman, Operator, Lower Division Clerk, Driver, Time Keeper, Cleaner, Messenger Boy, Blacksmith, Watchman, Turner, Rigger, Plumber, Store Helper, Chainman etc. The first party-management is required to pay wages and other benefits to the casual labourers as have been agreed to be paid in the settlements dated 4-1-1981 and 11-4-1984 to bring uniformity in the pay structure of the employees and to remove discrimination between the categories of staff on the principle of "equal pay for equal work."

3. The first party-management, namely, Paradip Port Trust filed its written statement on the averment that :

The 553 Nos. of casual labourers on rolls (639 mentioned in the reference) were brought to the direct supervision of the management from the control of the contractors w.e.f. 1-11-1980. The Central Wage Board was appointed to recommend suitable wage structure for the regular employees of the port and Dock labour Boards only. That wage recommendation has no application to the casual workers. The casual workers do not work against any regular posts. There is no regularity of their employment. They do not perform similar type of duties as are performed by the regular employees of the Paradip Port Trust. Since they do not possess requisite qualifications and experience or pass any trade test, they cannot be equated with any regular employees of the Port Trust. They merely perform supplementary works besides assisting the regular employees of the Port Trust. Therefore, they were not assigned with any designation or recruited against any sanctioned posts.

The Scheme, namely, Paradip Port Trust Casual Workers (Regularisation of Employment) Scheme, 1985 was framed by the Port Trust which provides the conditions of services of the casual workers. These casual workers are paid their wage computed on daily rate basis, paid in a month.

Except Sl. No. 393, 511, 512, 608 and 629 of the list of 553 casual workers the rest are on the list. In gradual process suitable casual workers are being selected for different posts falling vacant subject to fulfilment of the Recruitment rules prescribed for the posts through a duly constituted Staff Selection Committee under the Paradip Port Trust Employees (Recruitment, Seniority and Promotion) Regulation Act, 1967. The C.L.R. workers are surplus to the requirement of the Port Trust. The Port Trust has no work to provide them full time jobs. As a matter of fact 181 numbers of casual labourers have been given appointment against different regular posts.

4. The Paradip Port Shramik Sangha, Intervenor (hereinafter referred to as the 'Shramik Sangha') has filed its claim statement on the averment that :

Paradip Bandar Shramik Union and Paradip Port Shramik Sangha had entered into a dialogue with the management. The conciliation failed, for which two conciliation reports were submitted to the Government. This dispute has been referred to on the failure report relating to the demands raised by the Shramik Union. The failure report concerning the demands of the Shramik Sangha has not seen the light of the day ; but nevertheless Shramik Sangha is a proper and necessary party, therefore, it preferred to appear as the intervenor.

In the National Wage Settlement dated 4-1-81 and 21-4-84 it has been settled that the casual labourers are entitled to the wage w.e.f. 1-11-80 which the first party-management refused to implement which is the subject matter of the present reference. This reference is for 639 casual labourers. The 639 workmen are entitled to wages paid to the port employees in

terms of the wage settlements, the principle being the pay, D.A. and V.D.A. is to be divided by 30 days which will bring out the daily wage of the casual labourers. The Port Trust Board in its Agenda, item No. 21/81/86-87 for the year 1986 decided to fill-up the existing vacancy by relaxing the norms of engagement of the casual workers and prohibiting engagement of outsiders to these categories of jobs. In the meantime some of the workers from amongst the aforesaid 639 workmen have been regularised depriving their rightful claims. The first party-management with an ulterior motive and in connivance with the Shramik Union paid some lump sum amount to some of the workers, admitting the entitlement of the workers towards the less earning of the said workers for the period for which the present adjudication is being done, and forced the said workers to submit receipts to be effective from 1-1-88 or from the date of their joining as casual labourers, whichever is later.

5. On these rival claims of the parties, the following issues have been framed :

ISSUES

1. If the reference is maintainable ?
2. If the nature of duties performed by the C.L.R. workers of Paradip Port Trust and the regular employees of the said Port Trust are different and dissimilar ?
3. If the C.L.R. workers of Paradip Port Trust are not entitled to be equated with the regular employees of the Port Trust in the matter of payment of wages and other service conditions ?
4. If the action of the management of Paradip Port Trust in not extending the service conditions and other facilities extended to its Class-III and Class-IV employees and listed employees of the Paradip Port Trust under the Paradip Port Cargo Handling Scheme, 1979 as per the National Wage Settlement arrived at between the Government of India in the Ministry of Shipping and Transport and All India Port and Dock Workers Federation and other federations of Port and Dock workers, to the workman Kaibalya Badtia and 638 others, casual labourers is legal and justified ?

5. To what relief, if any, the second party-workmen are entitled ?

ISSUE NOS. 2 & 3:

6. Paradip Port Shramik Union has examined W.W. Nos. 1 and 2, Paradip Port Shramik Sangha, the intervenor examined W.W. Nos. 3 to 7 on its behalf. The management examined the Secretary of the Paradip Port Trust as its lone witness. From the trend of examination of W.W. Nos. 1 & 2 as well as from the suggestion made by the Intervenor to the witnesses, it has been made abundantly clear that the aggrieved workmen (Electrician, Plumbers etc. set out in para-21 of the claim statement of the Shramik Union) were originally engaged to carry out the job involve-

ment of the Paradip Port Trust through contractors, subsequently brought over to the direct control of the Port Trust. The management has pleaded that those casual workers became the surplus hands since these casual workers are other than the permanent employee of the Port Trust.

7. To construe the reference in its positive form on the question that the benefits availed by the permanent employees of the Major Port Trust by the settlements, Exts. 4, 5, 6 & VIII if are to be extended to the casual labourers, and if they are entitled for equal wage with that of the permanent employees of the Paradip Port Trust, W.W. Nos. 2 and 3 have added that casual labourers are entitled to the differential arrear wages from 1-11-80 at par with the regular employees, besides other fringe benefits which are being availed by the permanent employees. Ext. VIII seemed to be the last settlement from the settlement filed. On a plain reading of para-3 of Ext. VIII (Ext. VIII/1) read with Exts. E and E/1, so also, para-1 of Ext. 5 and para-2 of Ext. 6, the applicability of these settlements to the casual workers cannot be conceived since there is no material that Paradip Port Casual Labour Regularisation Scheme, 1985 or 1994 originated under the Dock Workers (Regulation of Employment) Act, 1948.

8. According to W.W. No. 2 during pendency of the present dispute there was a settlement between the management and Paradip Bandar Shramik Union (Ext. 7) whereafter the wage of the casual labourers have been made equal to that of the regular employees. M.W. No. 1 has also admitted this aspect of the case. M.W. No. 1 has further added that besides Ext. 7, the writ preferred by the Shramik Sangha has been disposed of vide Ext. B, whereafter the Scheme, Exts. E/1 originated alongwith Exts. E & F consistent to the orders passed in Ext. B. The testimony of M.W. No. 1 is that from 11-3-95 the casual labourers have been re-designated as 'Auxillary workers skilled' and 'Auxillary workers unskilled'.

W.W. No. 3 has said that on seeing the work efficiency of individual casual workers, the management categorised the workers to be either 'skilled or 'unskilled and he has proved Exts. 3 and 4. W.W. No. 4 has said that the first part of para-4 of Ext. 7 has been implemented by the first party-management. In this connection, M.W. No. 1 has said that 324 casual workers (auxillary skilled & auxillary unskilled) have been left out to be drafted to the Class-III and Class-IV posts, the rest have been so far absorbed in Class-III and Class-IV posts of permanent cadre.

9. The dispute has been referred to this Tribunal on 12-1-90. Ext. B, copy of the judgment of the Hon'ble Court though has been disposed of on 3-12-92, apparently filed in the year 1989. Ext. B, the judgment of the Hon'ble Court passed on 3-12-92 is of paramount consideration as W.W. Nos. 1 to 7 have simply breathed out that they are entitled for equal wage with that of the employees for whom Exts. 4, 5, 6 & VIII have originated. It is worthwhile to quote the mandatory directions of the Hon'ble Court found mentioned in the concluding line of para-4 as well as in the concluding line of para-5 of

Ext. B, which reads :

"4. xx We accordingly command the opposite party No. 1 to take immediate steps to suitably absorb those of the casual labourers mentioned in Annexure-2 who have not yet been taken into permanent employment having regard to the length of service rendered by them, qualification and other factors relevant for the purpose."

xx xx xx

"5. xx In view of this, the claim of the petitioner for grant of equal pay for equal work cannot be resisted and the same is allowed from the date of pronouncement of the judgment."

The representative of the management has placed reliance in para-3 of the citation reported in AIR 1996 SC 1565 (State of Himachal Pradesh, Appellant Vrs. Suresh Kumar Verma and another, Respondent) which reads :

"3. It is seen that the project in which the respondents were engaged had come to an end and that, therefore, they have necessarily been terminated for want of work. The Court cannot give any directions to re-engage them in any other work or appoint them against existing vacancies. Otherwise, the judicial process would become other mode of recruitment dehors the rules."

The representative of the management also placed reliance in the citation reported in AIR 1996 SC 3230 (Hindustan Shipyard Ltd. & others, Appellants Vrs. Dr. P. Sambasiva Rao etc., Respondents).

With respect to the enunciation of law reported in the citations referred to above, no material has been produced in this Tribunal that further challenge has been made to the Judgment passed on 3-12-92 in O.J.C. No. 2886 of 1989. The facts covered under the O.J.C. having been made final, is relevant for the adjudication of the dispute at hand.

10. Ext. 6 though has originated for the revision of wages for the Port & Dock Workers (permanent employees), para-21.1 readwith para-22.1 of Ext. 6 also has made it abundantly clear that there was contemplation for appointment of a separate panel to formulate the wage structure for casual workers, or to decasualise the workers on roll. There is no material placed in this Tribunal that these involved casual workers have been left out as a separate entry other than the casual workers stipulated in para-21.1 readwith para 22.1 of Ext. 6. Equally no material has been placed by any of the parties that according to the contemplation envisaged in para-21.1 readwith para-22.1 of Ext. 6 any Committee has been constituted by the Government for the purpose of decasualisation of the casual workers.

11. Ext. B originated on 3-12-92. The direction contained in Ext. B, quoted above, is wholesome and self-explanatory and has left little room for this Tribunal to further appreciate the materials concerning thereto. In the circumstances, basing on the mandatory direction of the Hon'ble Court contained in Ext. B (quoted above) this Tribunal is of the view that the nature of duties performed by the C.L.R. workers of the Paradip Port Trust and the regular employees of the said Port Trust are not dissimilar, and therefore, they are to be equated with the regular employees of the Port Trust in the matter of payment of wages and other service conditions.

Issue Nos. 2 and 3 are answered in favour of the second party-workmen.

ISSUE NO. 4 :

12. On 5-8-97 M.W. No. 1 has said that after origin of Ext. B, leaving 324 casual workers (auxiliary skilled and auxiliary unskilled) rests have been taken to the permanent cadre of the first party-organisation. Non-engagement of approximately half of the casual workers even after lapse of five years cannot be a total compliance to the direction of the Hon'ble Court (quoted above). There is no material placed in this Tribunal that after origin of Ext. B any direct recruitment have been made to the permanent cadre of the first party-organisation defeating the claim of the casual workers for whom originated Ext. B. A total ban is imposed for such recruitment to the permanent cadre of the first party-organisation as against different trades set-out in para-21 of the claim statement of the Shramik Union.

Thus, issue No. 4 is disposed of accordingly.

ISSUE NO. 5 :

13. The clamouring of the involved workers for extending the service conditions and other facilities available to the Class-III and Class-IV employees of the Paradip Port Trust has been redressed vide Ext. B, therefore, the reference is maintainable.

Issue No. 1 is answered in favour of the second party-workmen.

ISSUE NO. 6 :

14. In the net, the casual workers should be immediately absorbed in the permanent employment of the first party organisation within six months from the date of publication of this Award.

ANCILLARY ISSUE :

15. Paradip Port Trust has been declared to be a Major Port Trust in April, 1966. The management has taken a stand in its written statement that the involved casual workers having been brought over to the first party-organisation from the grip of the contractors are surplus hands of the first party-organisation. Even though competent persons were available to carry out the work of the first party-organisation, it was unwise to get the work done through contractors. Prudence would prevail

upon the Government of India, Ministry of Shipping & Transport, New Delhi to fix-up financial liability upon the persons responsible for creation of these surplus hands by getting the works done by the contractors through its workers when competent hands were available with the first party organisation. After fixing financial liability efforts should be made to realise the spoiled amount, after all the first party-organisation is a public undertaking.

The reference is answered and the Award is passed accordingly.

M. R. BEHERA, Presiding Officer,

नई दिल्ली, 12 फरवरी, 1998

का.आ. 505.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उ.प्र. राज्य खनिज विकास निगम लि. के प्रबन्धनत्व के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 12-2-98 को प्राप्त हुआ था।

[सं. एल-29012/117/94-आई.आर. (विविध)]
बी.एम. डेविड, हेरक अधिकारी

New Delhi, the 12th February, 1998

S.O. 505.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of U.P. Rajya Khanij Vikas Nigam Ltd. and their workman, which was received by the Central Government on the 12-2-98.

[No. L-29012/117/94-IR(Misc)]
B. M. DAVID Desk Officer

ANNEXURE

BEFORE SRI B. K. SRIVASTAVA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, PANDU NAGAR, KANPUR.

Industrial Dispute No. 46 to 1995

In the matter of dispute between :

Shiv Shankar c/o Upadhyaksh Bhartiya Cement Udyog Mazdoor Sangh Dalla District Sonbhadra, U.P.

AND

General Manager,
U.P. Rajya Khanij Vikas Nigam Limited
Kapoorthala Commercial Complex,
Aliganj, Lucknow.

APPEARANCE :

V. Singh for the management and D.N. Tiwari for the workman.

AWARD

1. Central Government, Ministry of Labour, vide notification No. L-29012/117/94-IR(Misc) dated 2-5-95 has referred the following dispute for adjudication to this Tribunal —

Whether the action of the management of U.P. State Mineral Development Corporation in terminating the services of Sri Shiv Shankar s/o Sri Sita employed as Mazdoor w.e.f. 29-3-92 is justified ? If not, to what relief the workman is entitled ?

2. The case of the concerned workman Shiv Shankar is that he was engaged as helper on 30-4-90 at Chopan in District Sonbhadra, and he continuously worked upto 28-3-92, when his services were terminated. This termination is bad being in breach of provisions of section 25F of I.D. Act.

3. The opposite party has alleged that the concerned workman was never engaged by the opposite party hence question of termination does not arise.

4. In support of his case, Shiv Shankar has examined himself as W.W.1. He has shown his father's name as Dev Prasad side by side he has added alias by way of Sita. There is attendance register ext. W-1 on record in which one Shiv Shankar son of Dev Prasad has been shown as an employee. In the reference order the workman has been shown as son of Sita. In my opinion the concerned workman is deliberately telling lie by stating that his father's name was also Dev Prasad. He has done so in order to take benefit of entry in the attendance register. My opinion is that the concerned workman being son of Sita, was never engaged by the opposite party, hence question of his termination does not arise.

5. Accordingly, my award is that the concerned workman is not entitled for any relief.

B. K. SRIVASTAVA, Presiding Officer